

REPORT TO THE PRESIDENT ON AGENCY ADR ACTIVITIES

Agency name: United States Department of Agriculture

Agency Dispute Resolution Specialist:

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Other ADR point of contact:

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Does your agency have an ADR policy statement? Yes **X** No ____

The policy addresses workplace disputes. A second policy, covering programmatic disputes as well as further guidance on workplace disputes, is in the clearance process.

What is your agency's ADR budget? \$2,788,485

If you do not have a budget, how are your ADR activities funded?

How many FTE's does your agency dedicate to ADR? If none, how are your ADR activities staffed?

30.5. This includes ADR program managers and mediators, almost all focusing on workplace disputes. We also have many collateral duty mediators.

What programs has your agency established during FY 1999 pursuant to the Administrative Dispute Resolution Act and the President's directive to promote greater use of ADR?

The USDA Conflict Prevention and Resolution Center was established in October 1998. The principal focus of the Center has been on promoting the development of a Department-wide ADR program that encourages the use of mediation before workplace disputes enter the EEO complaint or grievance system. The Center issued guidance to USDA agency heads to help them design their own workplace ADR programs and created a webpage (<http://www.usda.gov/cprc>).

A USDA-wide ADR Working Group consisting of senior managers and union representatives was established in January 1999 to further the goals of the Administrative Dispute Resolution Act and the Secretary's Policy within USDA. This has contributed to several new ADR (mediation) programs for workplace disputes being developed. A mediation program for employees in Departmental Administration and USDA staff offices will be implemented December 1, 1999. The Agricultural Marketing Service and Grain, Inspection and Packers and Stockyards Administration are both planning to have their programs operational early in 2000. Both Agencies have selected coordinators. In addition several agency heads have issued memoranda of support for ADR.

What ADR programs has your agency expanded or improved during FY 1999?

The Forest Service created a national coordinator position for its Early Intervention Program (previously regional), selected a coordinator, and expanded EIP (mediation) services nationwide. The Food Safety Inspection Service, Animal and Plant Health Inspection Service, and Research, Education and Economics Mission Area have expanded their ADR (mediation) programs to include conflict management training to employees at all levels. Also, the Office of Inspector General trained almost all its managers and supervisors in conflict management skills this year. Several agencies have expanded their services to include additional ADR processes. Several agencies are in the developmental/design stage.

What benefits has your agency received from these programs?

1. 82% of 283 workplace disputes mediated were successfully resolved.
2. Disputes going through mediation have been resolved quickly and at little cost.
3. Employees at all levels have had opportunities to develop conflict management skills.
4. Two agencies reported that the number of EEO complaints were reduced.

What ADR success stories does your agency have to share with the President?

The Secretary's ADR Working Group developed ADR champions throughout USDA. The Working Group has been working together to develop policy and procedures for use of ADR within USDA. A number of products from the Working Group are to be issued within the next month or so.

Awareness, use and support of ADR at USDA clearly increased in FY 99.

The National Finance Center received recognition at the OPM ADR Awards Ceremony for innovative design and practices, which include their Inclusion University and use of conciliation at the earliest possible moment in workplace disputes.

The Forest Service, an agency frequently under scrutiny due to employee complaints, has responded in part by expanding its ADR program nationwide.

The Agricultural Marketing Service's Perishable Agricultural Commodities Act Branch, which administers a program to ensure fair practices in the sale and purchase of agricultural commodities, has 35 employees who are actively working to mediate disputes between produce buyers and sellers. 92 cases were resolved through mediation.

Several agency administrators sent memoranda addressed to all employees explaining availability and the benefits of ADR within their organization.

What are your agency's ADR goals, including resources necessary for the future?

1. All USDA employees are aware of and have access to ADR services in FY 2000.
2. Greater use of ADR by USDA employees to achieve early resolution of workplace disputes.
3. Development of ADR program that complies with new EEOC regulations.
4. Production and distribution of a 15-minute video describing Alternative Dispute Resolution at USDA; all employees view the video.
5. Development of comprehensive ADR roster of neutrals.
6. Re-authorization of the Agricultural Mediation statute by September 30, 2000.
7. Expanded use of ADR to resolve USDA programmatic disputes.
8. Shorter times for resolution of disputes that used to take years to settle
9. Development of effective ADR tracking system.
10. All USDA agencies make resources available to pay for ADR neutrals in appropriate disputes.

REPORT TO THE PRESIDENT ON AGENCY ADR ACTIVITIES

Agency Name: Archives and Records Administration

Agency DRS and other ADR Points of Contact:

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Does your agency have an ADR Policy Statement? Yes

What is your agency's ADR budget? \$77,000.

How many FTEs does your agency dedicate to ADR? If none, how are your ADR activities staffed?

NARA staffs the ADR function with approximately one FTE.

What programs has your agency established during FY99 pursuant to the ADR Act and the President's directive to promote greater use of ADR?

NARA launched a pilot ADR program focused on workplace disputes. The program includes those disputes that may be brought under the EEO system, negotiated or administrative grievance procedures, and other workplace disputes.

What benefits has your agency received from these programs?

NARA has successfully settled several disputes using ADR, including disputes that could have been pursued through the EEO process.

What ADR success stories does your agency have to share with the President?

Using mediation, NARA was able to reach a reasonable accommodation for an employee's disability and to settle a related, pending EEO case using mediation.

What are your agency's goals, including resources necessary for the future?

NARA's goal is to expand the use of ADR among all of NARA's field offices. Program expenses are budgeted to increase by approximately 50% over the next three years to cover the cost of an additional FTE and the additional cases that we hope will result from aggressive marketing and education initiatives.

REPORT TO THE PRESIDENT ON AGENCY ADR ACTIVITIES

Agency Name: Central Intelligence Agency

Agency Dispute Resolution Specialist and other ADR points of contact:

Name: Cynthia Drabek

Name: Glenn Crispell

Phone: (703) 874-3143

Phone: (703) 482-0782

Does the Agency have an ADR policy statement?

Yes

What is your Agency's ADR budget?

The Agency's ADR Budget and ADR resources are included in the Office of the Director of Central Intelligence and are approximately \$80,000.

How many FTE's does your agency dedicate to ADR?

None. The Agency's ADR Program Manager is a former staff employee who is now an independent contractor. The Agency has trained 24 staff employees as mediators and they serve in that capacity as a collateral duty. A senior Agency staff attorney is also available on an "on call" basis. The Agency also utilizes mediators from the Northern Virginia Mediation Service to co-mediate all ADR cases and to evaluate Agency mediators until they are certified.

What programs has your Agency established during FY 1999 pursuant to the Administrative Dispute Resolution Act and the President's directive to promote greater use of ADR?

The Agency did not establish any new ADR programs during FY 1999. The Agency's ADR program was approved in February 1997 after an 18-month pilot program for both Equal Employment Opportunity (EEO) and grievance cases.

What ADR programs has your Agency expanded or improved during FY 1999?

The Agency expanded its outreach program to employees and managers through increased awareness briefings, participation of the ADR Program Manager as a resource in management training programs, issuance of an ADR brochure explaining the process, the establishment of a WEB site, and participation in numerous forums addressing resources available to employees to assist them in resolving workplace disputes. The referral rates from the Agency's EEO and grievance counselors have increased significantly.

What benefits has your Agency received from these programs?

Several of the referrals from EEO and grievance counselors resulted in resolution of the dispute during the pre-complaint stage, with a significant cost and resource savings. The Agency's mediation program addresses interpersonal disputes, including EEO complaints, grievances and matters that are outside any formal legal or quasi-legal process. Communications issues between employees and supervisors or between peers are most common. There is an increasing awareness in the Agency of the benefits to be gained through mediation, and the Agency's settlement rate is 90 per cent.

What ADR success stories does your Agency have to share with the President?

We have no dramatic success stories to share. It would be difficult to share particular experiences without compromising the participants' confidentiality.

What are your Agency's ADR goals, including resources necessary for the future?

The Agency's goal for the out years is to continue its outreach program to keep all employees informed of the ADR and Ombudsman processes, and to encourage managers to accept ADR mediation as a valued management tool. A long-term goal is to inculcate ADR mediation as a negotiation skill for the entire workforce. The Agency does not anticipate any change in its resource needs during the next year. However, the Program Manager will continue to monitor the performance of the Agency mediators, provide refresher training, and recruit additional mediators to better reflect the diversity of the Agency's workforce.

REPORT TO THE PRESIDENT ON AGENCY ADR ACTIVITIES

Agency Name: Department of Commerce

Agency Dispute Resolution Specialist and other ADR Points of contact:

Name: Roslyn Hoover
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Does your agency have an ADR policy statement?

Yes: _____ No: X Draft policy statement is in circulation for comment

What is your agency's ADR budget? \$ 375,000

How many FTE's does your agency dedicate to ADR?

The Department of Commerce dedicates 3.5 FTE

What programs has your agency established during FY 1999 pursuant to the Administrative Dispute Resolution Act and the President's directive to promote greater use of ADR?

The Department is fine-tuning its EEO ADR program, which was started in 1995.

What ADR programs has your agency expanded or improved during FY 1999?

ADR Evaluation System

We have completed development of the ADR evaluation system and will begin development of the ADR tracking system shortly. The ADR evaluation system consists of two evaluation forms: 1) a two page EEO ADR Program USER SATISFACTION SURVEY, to be handed out at the conclusion of the mediation session; and 2) a 4 page follow-up MEDIATION EVALUATION SURVEY, to be mailed to both parties two to three weeks later, which addresses the extensive array of information which will be monitored by the Interagency Alternative Dispute Resolution Working Group.

ADR Tracking System

We have also identified a comprehensive ADR tracking system used successfully by the U.S. Postal Service, and plan to adapt it to the Department's needs. Field requirements exceed the current capability of the Complaint Tracking System. Will be working with other Compliance Division staff who are refining the Complaint Tracking System to incorporate necessary amendments/addendums to the overall tracking system. The Tracking System will monitor mediation elections and settlement rates as compared to the traditional EEO informal and formal complaint processes.

DOC EEO ADR Guide

We developed written material to market ADR to managers. The EEO ADR Guide is developed and will be printed in the First Quarter FY 2000. It takes into account the latest policy direction from the EEOC and represents a significant step in developing our ADR marketing strategy. The Guide reflects an overview of policy and operational guidance on the Department-wide ADR and mediation process for Bureau use. As the “Preface” to the Guide indicates, the Guide was written with several Commerce audiences in mind: 1) EEO staff and Counselors whose role is to provide information on the ADR program to individuals seeking advice; 2) employees considering ADR as an option in resolving a dispute; and 3) management officials who wish to learn more about mediation and their responsibilities in its process.

One of the new requirements of the Equal Employment Opportunity Commission is that agency EEO Counselors must provide written information to employees they counsel on their ADR programs. It is our intention for EEO Counselors to use the ADR Guide to satisfy that requirement. Also, the Guide was specifically written to address management’s questions regarding ADR, mediation, what they can expect in mediation, and how they can best prepare for the session.

EEO ADR Training Videos

In addition to the ADR Guide, we have located two ADR training videos for employees and managers which will help Bureaus promote their ADR and mediation programs. The first video depicts a “mock” mediation session so both employees and managers can preview what goes on in a mediation session. The second video depicts interviews with managers who talk about their mediation experiences and recommend its use to both employees and managers. We believe both videos will help our EEO community better promote the value of ADR and mediation as opportunities to achieve early resolution of complaints. We have received permission to reproduce the videos for distribution throughout the Bureau EEO Offices. The EEO Officer at NIST has volunteered to make copies of the videos for EEO Officer duplication.

Departmental Policy Statement

Work has begun on the development of a Secretarial Policy Statement endorsing ADR. We look forward to the Policy Statement endorsing ADR serving as a catalyst in our ADR marketing strategy. Following the Secretary’s endorsement of ADR, we will proceed with the development of a Department Administrative Order (DAO) which will institutionalize the ADR program through-out Commerce.

What benefits has your agency received from these programs?

We look forward to an increase in election of ADR by employees through implementation of the above marketing strategies.

What ADR success stories does your agency have to share with the President?

Commerce is pleased to report that three of its EEO staff have been selected to serve on the Equal Employment Opportunity Commission (EEOC)/National Partnership for Reinventing Government Interagency Federal EEO Task Force. The Task Force will examine the federal sector complaint process. Its main objective is to advance the fairness and efficiency of the EEO system and to stimulate changes that will prevent discrimination in the federal workplace.

Kimberly Walton, Director, Office of Civil Rights, has been selected to serve on the Senior Leadership Committee, which will oversee the progress of the Task Force Initiative. Roslyn Hoover, the Department's ADR Manager, is serving on the Early Dispute Resolution Task Force Team, which will be working to identify alternative dispute resolution methods for use early in the Federal EEO process, to map out those ADR processes and their usefulness, and to prepare written recommendations. And, Wallace Welch, the Department's Chief Investigator, is serving on the Data Collection Task Force Team, which will respond to the recent General Accounting Office May 1999 report, which suggested that the EEOC convene a group of federal agency representative to address data collection issues in the Federal EEO process.

We look forward to playing pivotal roles in sparking innovation and best practices to enhance dispute resolution efforts in the EEO arena.

What are your agency's ADR goals, including resources necessary for the future?

Bureau Briefings

Our priority for FY 2000 will be to work closely with our EEO community within the Bureaus to educate the Commerce workforce on mediation as a viable alternative to the more protracted complaint process through briefings. Our marketing resources include the Secretarial Policy Statement, the EEO ADR Guide, and the ADR Training videos. Once finalized, the Guide will be our first entry into a DOC ADR Web Page.

Resources Necessary for the Future

We anticipate an additional budgetary need of \$100,000 to accommodate the need to train a cadre of in-house mediators; to procure the services of professional mediators to work with us during the certification process of these in-house mediators; to develop, print, and circulate marketing materials such as the EEO ADR Guide, the ADR training videos, ADR posters, etc.; to develop an ADR WEB page and other marketing materials; and to support travel to market the program to employees and managers throughout the Commerce field locations.

REPORT TO THE PRESIDENT ON AGENCY ADR ACTIVITIES

Agency/Bureau: Commission on Civil Rights

ADR Specialist Name: N/A

ADR Specialist Phone: N/A

ADR Specialist Email: N/A

Other ADR POC Name: Robert Anthony

Other ADR POC Phone: (202) 376-8105

Other ADR POC Email: robert.g.anthony@usccr.sprint.com

Does your agency have an ADR policy statement: Yes

ADR budget: 0.0

How are ADR activities being funded: The Commission is currently drafting an ADR plan which will be in place prior to the January 1, 2000 deadline. The Commission's Director of EEO Programs is working with various stakeholders including management and the agency's union membership to develop the plan. The draft plan currently calls for ADR activities to be funded on an as-needed basis via a BPA with a third-party service provider.

How many FTEs: 0

How are ADR activities staffed: The Commission's draft ADR plan currently calls for ADR activities to be staffed on an as-needed basis via a BPA with a third-party service provider.

What programs has your agency established: The Commission is currently drafting an ADR plan which will be in place prior to the January 1, 2000 deadline. The Commission's Director of EEO Programs is working with various stakeholders including management and the agency's union membership to develop the plan.

What ADR programs has your agency expanded: N/A

What ADR programs has your agency expanded: N/A

What benefits has your agency received: N/A

What ADR success stories: N/A

What are your agency ADR goals: The Commission is a small agency with under 100 FTEs. Given the Commission's current work load, staffing level and the resulting heavy demands on each employee's time, the agency's goal is to make ADR available to complainants at their request on an as-needed basis through third-party sources. If the budget and staffing of the Commission were to increase sufficiently, the agency would seek to train at least three ADR specialists and participate in the Federal shared neutrals program. In either case, the Commission is committed to participating in the ADR process in good faith in order to resolve cases in the manner most equitable to all parties involved.

REPORT TO THE PRESIDENT ON AGENCY ADR ACTIVITIES

Agency name: Commodity Futures Trading Commission

Agency Dispute Resolution Specialist and other ADR points of contact:

Name: Frank Alston
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Name: Daryl Stephens
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Does your agency have an ADR policy statement? Yes X No

What is your agency's ADR budget? \$

If you do not have a budget, how are your ADR activities funded?

Funding by Office of the Executive Director

How many FTE's does your agency dedicate to ADR?

If none, how are your ADR activities staffed?

The ADR duties are performed by Office of Human Resources staff.

What programs has your agency established during FY 1999 pursuant to the Administrative Dispute Resolution Act and the President's directive to promote greater use of ADR?

In FY 1999 the Commission established an ADR (mediation) program.

What ADR programs has your agency expanded or improved during FY 1999?

In FY 1999 the Commission's two-year pilot program became permanent.

What benefits has your agency received from these programs?

Through mediation, parties have been able to resolve disputes resulting in costs saving. Productivity has been restored to the areas impacted by the disputes.

What ADR success stories does your agency have to share with the President?

Early intervention played a pivotal role in resolving several sensitive and emotional issues. Working relationships among the affected parties improved.

What are your agency's ADR goals, including resources necessary for the future?

The Commission will train staff and promote the use of ADR.

REPORT TO THE PRESIDENT ON AGENCY ADR ACTIVITIES

Agency name: Consumer Product Safety Commission (CPSC)

Agency Dispute Resolution Specialist and other ADR points of contact: None

Does your agency have an ADR policy statement? Yes ____ No X

While we do not currently have any formal programs in place, the CPSC supports the use of ADR and recently used it in one case. We are currently developing an ADR process for our Equal Employment Opportunity program and should have it in place within the next 2-3 months. We will provide you a copy of the policy when it is completed.

What is your agency's ADR budget? None

If you do not have a budget, how are your ADR activities funded? N/A

How many FTE's does your agency dedicate to ADR? None

If none, how are your ADR activities staffed? N/A

What programs has your agency established during FY 1999 pursuant to the Administrative Dispute Resolution Act and the President's directive to promote greater use of ADR?

None

What ADR programs has your agency expanded or improved during FY 1999?

None

What benefits has your agency received from these programs?

N/A

What ADR success stories does your agency have to share with the President?

None

What are your agency's ADR goals, including resources necessary for the future?

See response above.

REPORT TO THE PRESIDENT ON AGENCY ADR ACTIVITIES

Agency/Bureau: Corporation for National and Community Service

ADR Specialist Name: Thomasenia Duncan
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Other ADR POC Name: Nicola Goren
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Does your agency have an ADR policy statement? Yes

What is your agency's ADR budget? None

How are ADR activities being funded?

The Directors of Equal Opportunity and Human Resources have paid for individual ADR sessions out of their operating budgets. We have had no set budget for ADR. However, for the coming year, we will have a budget for our new ADR pilot program. We have not finalized the numbers yet.

How many FTEs? none

How are ADR activities staffed?

Currently, the Directors of Equal Opportunity and Human Resources arrange for ADR activities independently and with funds from their respective budgets. However, the Corporation is in the process of finalizing an ADR policy and pilot program for workplace disputes, that will go into effect January 1, 2000. We are contracting for the services of an ADR expert to manage the day-to-day operations of the program.

What programs has your agency established?

Several members of the Corporation's staff attended many of the Working Group's ADR sessions during the course of the last year to gather information on starting our own program. As mentioned above, we are currently finalizing our policy and pilot program for workplace disputes. It will go into effect January 1, 2000.

What ADR programs has your agency expanded? None.

What ADR programs has your agency expanded? None.

What benefits has your agency received? N/A

What ADR success stories does your agency have to share with the President?

Our Office of Equal Opportunity has used mediation in five cases involving employees in the past twelve months. Four out of the five disputes were resolved through the mediation process. In the one case that was not resolved, mediation did, nonetheless, resolve 5 out of 6 of the issues involved in the dispute.

What are your agency's ADR goals, including resources necessary for the future?

We plan to run our pilot workplace disputes ADR program starting in the new year. Our goal is to improve communication in the workplace and provide a viable alternative for resolving workplace disputes. After six months, we will evaluate the costs, outcomes, successes and failures, and make changes to the ADR program based on that feedback. If the program is successful, we hope to expand it to our contracting and grant-making activities.

REPORT TO THE PRESIDENT ON AGENCY ADR ACTIVITIES

Agency name : Department of Defense

Agency Dispute Resolution Specialist:

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Office of the Secretary of Defense, Dispute Resolution Specialist:

Name: Harold J. Kwalwasser, Deputy General Counsel (Legal Counsel)

Phone: 703-697-2714

Email address: kwalwash@osdgc.osd.mil

Other ADR points of contact:

Name: Christine M. Kopocis, Acting ADR Liaison

Phone: 696-8524, Ext. 154

Email address: kopocisc@sdgc.osd.mil

Does your agency have an ADR policy statement?

Yes

What is your agency's ADR budget?

If you do not have a budget, how are your ADR activities funded?

All operations are funded from unsegregated operating accounts, except for the Navy, which has budgeted \$300,000 for FY99, and the Air Force, which has budgeted \$408,000.

Components' activities are funded by individual Components from Component operation and program budgets. *See* individual Components reports for specifics.

How many FTE's does your agency dedicate to ADR?

If none, how are your ADR activities staffed?

The Navy has dedicated 4 FTE's, the National Guard Bureau and the Air Force have dedicated 2 FTE's, and the Army Materiel Command has dedicated 1 FTE. Other Components utilize personnel in the Office of the General Counsel or Human Resources/EEO on collateral duty as program managers and mediators, and do not separately account for this commitment.

The Components generally use internal or shared-neutrals-within-the-Department mediators. *See*

individual Components reports for specifics.

What programs has your agency established during FY 1999 pursuant to the Administrative Dispute Resolution Act and the President's directive to promote greater use of ADR?

A. General

The Department has expanded several individual Component programs and participated actively in the Inter-Agency Working Group. *See* individual Components reports for specifics.

Additionally, the Department of Defense established a department-wide reporting form to identify and track ADR activities across components. The purpose of the form is to track the growth of ADR throughout the Department. At the beginning of the year, only the military services and the Defense Logistics Agency had reporting systems in place, but the smaller Components had no formal reporting system in place.

The Air Force has received widespread praise for the scope and breadth of its ADR Program website. The website has responded to more than 72,000 requests since its inception in February.

B. Workplace

The major Components which did not have ADR programs for EEO disputes have established such programs, and have designed processes, trained mediators, and educated personnel on the benefits of ADR.

The Defense Commissary Agency's 90-day accelerated EEO complaint process was established in conjunction with the Navy as a pilot workplace ADR program, and is an example of Components sharing experiences and expertise.

In January 1999, the Defense Logistics Agency launched its formal mediation program for EEO complaints agency-wide. The program, named RESOLVE (Reach Equitable SOLUTIONs Voluntarily and Easily), was designed to provide mediation services to employees during the informal EEO complaint stage. Sponsored jointly by the Defense Logistics Agency Equal Employment Opportunity Office and Office of General Counsel, the RESOLVE program uses a cadre of agency employees trained and certified as mediators pursuant to standards established by the agency.

Components have also established partnerships to enhance relationships with labor/unions. Examples include:

--Puget Sound Naval Shipyard. The Labor Management Partnership Council's ADR Committee offers a variety of processes for labor-management disputes; and

--Marine Corps Logistics Base in Barstow, California. AFGE Local 1482 and the Base

Executive Officer created an ADR panel.

C. Procurement

There are several notable developments in this area:

The Navy has developed what it believes to be the preeminent federal course in government contracts ADR, "Alternative Dispute Resolution Throughout the Life of the Contract".

The Navy, the Departments of Defense and Justice, and two of the country's largest defense contractors have retained mediators and are engaged in an ADR process in a nearly decade-long litigation involving the largest dollar-value government contracts case filed to date.

The Corps of Engineers established a joint contractor/government "partnering" review team within the construction industry.

The Air Force signed 16 corporate-level ADR agreements with the senior executives of the largest suppliers to the Air Force. In addition, the Air Force recently completed work on "Lightning Bolt 99-4" that required every major Air Force weapon system to have a program-level ADR agreement with its prime contractors. To support the commitment to ADR made in these agreements, the AF began an effort to design and implement an infrastructure to match its ADR needs with appropriate resources and advice.

D. Civil Enforcement

The Navy has developed a 3-day workshop on environmental negotiation for environmental compliance and installation restoration personnel.

The Navy and Florida officials on March 3, 1999, signed the Nation's first agreement to enforce environmental regulations on military bases by cooperation rather than confrontation.

What ADR programs has your agency expanded or improved during FY 1999?

A. General

The Components continued to expand and improve the significant ADR programs described in last year's interagency working group survey. This year, many Components focused activities on ADR education and promoting the use of ADR. Education activities included: briefings for supervisors and managers; ADR training for legal staff, EEO/HR staff, and contracting staff; and mediator training. Additionally, many Components increased the number of trained mediators and finally adopted processes that were piloted in 1998. *See* individual Components reports for specifics.

B. Workplace

The number of in-house mediators on the various Components and Department of Defense rosters of neutrals has increased during the year. For example, the Department of Defense roster began with 44

mediators and currently has approximately 60, and the Navy began with approximately 25 mediators and currently has 100. Additionally, the Navy implemented the first federal agency developed a certification process for its internal workplace mediators, and has certified the first group of 7 mediators.

The Army Materiel Command adopted across the Command the workplace ADR model it piloted in three test sites in 1998.

C. Procurement

The Army Materiel Command has expanded its ADR program focused on contract administration and performance, "Partnering for Success: A Blueprint for Promoting Government-Industry Communication and Teamwork." An inventory of 70 Army Materiel Command partnered contracts was compiled and includes detailed information on the partnering effort, benefits achieved, and lessons learned.

The Navy continues to use the Armed Services Board of Contract Appeals' successful ADR program as its principal source of expert neutrals in the government contracts arena. There is a pronounced trend toward the selection of less formal ADR processes, with mediation being the process of choice in FY99.

D. Environmental

The Navy has been willing to try new techniques and apply innovative problem-solving techniques to resolve environmental disputes, including:

- use of a respected marine Corps General to meet with the Navy, the town of Del Mar, California, and three other citizens groups to discuss the communities objections to the possibility of increased noise or air pollution from BRAC-directed movement of naval aircraft to Miramar;
- contracting for professional facilitation services to improve the effectiveness of the relationship between the Navy and state and federal regulators in the restoration of hazardous waste sites; and,
- an inter-agency agreement with the Institute for Environmental Conflict Resolution to provide consultative, facilitative, convening, and mediation services in resolving disputes between the Navy and federal or state regulators, private individuals, and/or public interest groups.

What benefits has your agency received from these programs?

Below is a summary of some of the benefits reported by the Components as a result of their ADR programs. *See* individual Components reports for specifics and additional benefits.

Although Components are continuing to improve the tracking mechanisms for reporting the actual benefits of ADR activities, most Components report a reduction in the number of formal EEO complaints and negotiated grievances through the introduction of mediation and other workplace ADR processes. The National Guard Bureau reports that ADR has been effective 98% of the time when applied to matters coming before its Equal Opportunity office. The Corps of Engineers resolved 109 of 439 problems using ADR techniques of conciliation and mediation. The Air Force now successfully resolves 75 percent of workplace disputes in which ADR use is attempted. The Air Force also has increased the number of ADR attempts to resolve workplace disputes by almost 30 percent (from 2,183 to 2,823) and the number of ADR resolutions by 35 percent (from 1,567 to 2,119).

Improved relations and fewer disputes between contractors and the government have been reported as a result of ADR efforts in the procurement area. For example, the Corps of Engineers reports that in contract claims and appeals, there were 15 claims collectively totaling \$25 million that were resolved for \$9 million in ADR proceedings.

What ADR success stories does your agency have to share with the President?

Below is a summary of some of the more noteworthy success stories reported by the Components that have not been discussed elsewhere in this report. *See* individual Component reports for specifics and additional success stories.

At the 1999 OPM Director's Awards for Outstanding ADR Programs, the Department of the Air Force ADR Program received recognition as an outstanding agency-wide ADR program and the 37th Training Wing, Lackland Air Force Base received recognition as an outstanding site-specific ADR program.

The Air Force, the Department of Justice, and The Boeing Company entered into a mediated settlement agreement, in which the parties resolved contract claims and disputes that had been unresolved for over 10 years. With the assistance of an independent third party mediator, a judge of the Armed Services Board of Contract Appeals, a structured process was used to analyze the claims, focus on cost, schedule, and performance issues, and isolate the matters in dispute. It is one of the largest contract claims ever resolved through an ADR process.

Preliminary numbers show approximately a 70% settlement rate of cases mediated under the Defense Logistics Agency's RESOLVE program.

On October 1, 1999, the Commander of Navy Region Southwest in San Diego, California, established the Navy's first Dispute Resolution Center, offering a range of ADR services to the 30,000 civilian employees services by the region's consolidated Human Resources Office. In conjunction with the Center, a new GS-201 series Personnel Management Advisor position has been established to reflect the cross functional nature of the work as well as new competencies in dispute resolution. Currently, 48% of the cases are resolved by the Personnel Management Advisor at intake or shortly thereafter, and 75% are resolved at the mediation table.

The Army Materiel Command-Level Protest Program was named as one of the top ten government procurement practices by the Office of Federal Procurement Policy within OMB. Since it began in April 1991, the Army Materiel Command has resolved over 485 protests within the agency. Only 48 decisions have been appealed to another forum such as the General Accounting Office and federal court. Of those appealed, only two have been reversed. Users of the Army Materiel Command-level protest program have their disputes resolved in approximately 17 days rather than the General Accounting Office's 75-day average.

The Corps of Engineers sustained its 90% resolution rate for contract claims and appeals. The 90% resolution rate reflects resolution in 67 of 73 contract claims and appeals over a 4-year period.

The U.S. Army Judge Advocate General Corps successfully used ADR in several cases involving claims over \$1.5 million. In one example, a process was developed to hire an expert to assist the neutral in formulating technical questions and areas of inquiry.

A number of Components report that consideration is being given to expanding the use of ADR from the substantive area where it began in a Component to other areas, such as from success in workplace disputes to use of ADR in civil enforcement and procurement areas.

What are your agency's ADR goals, including resources necessary for the future?

For some Components, goals include program design, training, and program implementation. For other Components, goals include increased tracking and evaluation of existing programs, and the use of lessons learned and benefits achieved to institutionalize ADR as a daily business practice in workplace, procurement, and civil enforcement. Throughout the Department of Defense, we intend to further integrate and share ADR resources across Components, as well as continue our active participation in the interagency ADR working group.

See individual Components reports for specifics.

DEPARTMENT OF DEFENSE ADR SURVEY RESPONSE - 1999

- A Department of the Air Force
- B Department of the Army
- C Department of the Navy
- D Defense Commissary Agency
- E Defense Contract Audit Agency
- F Defense Finance and Accounting Service
- G Department of Defense Education Activity
- H National Guard Bureau
- I National Imagery and Mapping Agency

REPORT TO THE PRESIDENT ON AGENCY ADR ACTIVITIES

Agency/Bureau: Department of Defense Education Activity

ADR Dispute Resolution Specialist:

Name: Wayne R. Wenzel

Phone: 703-696-4387

Email: wwenzel@hq.odedodea.edu

Does your agency have an ADR policy statement: No

ADR budget: none

How are ADR activities being funded:

How many FTEs: 1 part time

How are ADR activities staffed:

What programs has your agency established:

Compliance with new EEOC regulations on incorporating ADR into EEO process; also take advantage of ADR programs on military bases where there are schools.

What ADR programs has your agency expanded: EEO counseling

What ADR programs has your agency expanded: EEO counseling

What benefits has your agency received: Hard to quantify

What ADR success stories:

What are your agency ADR goals:

I have just recently joined the office and hope to make several improvements in the use of ADR at DoDEA, especially developing an ADR policy statement, as well as conducting training on ADR.

REPORT TO THE PRESIDENT ON AGENCY ADR ACTIVITIES

Agency Name: Drug Enforcement Administration (DEA)

Agency Dispute Resolution Specialist and other ADR Points of Contact:

Name: Barbara Lewis, DEA EEO Officer

Telephone: 202/307-8888

E-Mail: None

Does your agency have an ADR policy statement? Yes____ No____

What is your agency's ADR budget? \$_____

No formal budget currently exists for ADR. Dispute resolution activities will be contracted out on a case by case basis while the agency's ADR Program is being established.

How many FTE's does your agency dedicate to ADR?_____

If none, how are your ADR activities staffed?

Currently ADR responsibilities are assigned to an EEO Specialist as a collateral duty. Under the ADR Program that is being developed a full-time ADR Point of Contact will be recommended to oversee and administer DEA's ADR Program.

What programs has your agency established during FY 1999 pursuant to the Administrative Dispute Resolution Act and the President's directive to promote greater use of ADR?

During FY 1999, DEA established an ADR Task Force consisting of several high-level officials who were charged with developing an ADR Program that is tailored to the needs of the agency and it's employees.

What ADR Programs has your agency expanded or improved during FY 1999?

None

What benefits has your agency received from these programs?

Not applicable

What ADR success stories does your agency have to share with the President?

DEA's involvement with ADR is in the preliminary stage so there are no success stories to share at this time.

What are your agency's ADR goals, including resources necessary for the future?

DEA plans to have an ADR Program that makes use of the mediation and Peer Review Techniques. The agency also plans to allocate appropriate funds and staffing resources to administer the program.

REPORT TO THE PRESIDENT ON AGENCY ADR ACTIVITIES

Agency name: U.S. Department of Education

Agency Dispute Resolution Specialist and other ADR points of contact:

Name: Theodore Sky

Telephone: 202-401-6000

E-mail: **Ted_Sky@ed.gov**

Name: Frank Furey

Telephone: 202-619-9700

E-mail: Frank_Furey@ed.gov

Does your agency have an ADR policy statement?

Yes. See 58 Fed. Reg. 62486 (November 26, 1993)

What is your agency's ADR budget?

We have no separate budget for ADR activities.

If you do not have a budget, how are your ADR activities funded?

For the Informal Dispute Resolution Center (IDR Center), ADR activities are financed through the Office of Hearings and Appeals budget at a level of \$197,000. For the Cooperative Audit Resolution and Oversight Initiative (CAROI), we use personnel and other salaries and expenses funds from offices that already work with audit resolution and related activities. Thus, the CAROI is financed through our regular administrative budget.

How many FTEs does your agency dedicate to ADR?

The IDR Center has three full-time permanent staff committed to ADR as mediator/counselors. In addition, the staff from our Office of Hearings and Appeals is available when additional resources are required. The Director, Office of Hearings and Appeals, also serves as the Director for the Informal Dispute Resolution Center.

Staffs from our other offices, including the Office of Management and the Office of the General Counsel, provide ongoing support to the IDR Center mediator/counselors, as needed.

A relatively small percentage of the time of a number of staff members in our various offices that work on audit resolution and related matters is devoted to CAROI matters. It is not practicable to provide an estimate in FTE terms.

What programs has your agency established during FY 1999 pursuant to the Administrative Dispute Resolution Act and the President's directive to promote great use of ADR?

We are in the process of extending ADR on a regular basis to employees pursuing formal EEO actions. We are also extending the CAROI process to more states and school districts and making it more a part of the regular audit resolution process. (See next response.)

What ADR programs has your agency expanded or improved during FY 1999?

The IDR Center has expanded its role to include using other ADR methods to assist managers and employees in resolving their differences. Specifically, the IDR Center staff has used facilitation to assist small groups in resolving their disputes. In addition, the IDR Center staff has expanded its role to include training in conflict resolution skills for managers and employees.

CAROI is designed to reduce the number of formal disputes with state and local educational agencies regarding audit matters arising under various programs such as those authorized by the Elementary and Secondary Education Act of 1965. Prior to the establishment of CAROI, such disputes were typically addressed by the issuance of a notice of a disallowance decision to the cognizant state educational agency setting forth audit findings and requesting fund recovery. The state educational agency then had an opportunity to seek formal review by our Office of Administrative Law Judges and, if dissatisfied, by the Secretary. Appeal to the United States Court of Appeals for the appropriate circuit was authorized. See 34 C.F.R. Part 81. CAROI was designed to afford an alternative to this process by providing a framework within which state educational agencies could work with us at all stages of the audit resolution process. This included the stage prior to the issuance of the disallowance decision in order to resolve outstanding issues and commence corrective action.

In 1994 and 1995, the CAROI process began through arrangements or negotiations with three participating pilot states. As of this year, the CAROI process has been used in 29 CAROI projects (initiated to resolve particular audit findings or sets of audit findings applicable to a state) in 19 states, the District of Columbia, and two territories. The target level of participation is 40 projects by the end of fiscal year 2000.

What benefits has your agency received from these programs?

For the IDR Center, there has been a reduction in the number of EEO formal complaints. The IDR Center serves as a safety net for employees who feel they have nowhere to go and has provided immediate access for employees who have a need to discuss a problem.

The CAROI process has enabled us to reduce the number of formal audit disputes with state educational agencies. By resolving these issues through a cooperative process rather than formal adjudication, CAROI has also enabled both state and federal parties to a dispute to focus on corrective action and on improved means of program administration. The number of audit appeals has dropped dramatically. Finally, the CAROI process, it is believed, has contributed to the development of more positive working relationships with state and local agencies, thus contributing to the more effective implementation of federal education programs at the elementary and secondary level as well as the avoidance of audit problems before they start.

The reduced number of recurring findings identified during audits, such as those under the Single Audit Act, should provide one measure of the success of corrective action taken by grantees to better manage federal education funds and adhere to grant terms.

What ADR success stories does your agency have to share with the President?

A measure of success for the IDR Center can be seen in the number of employees that have not taken their issues into the formal arena. From the time the full-time mediator/counselor staff began in FY 1997, 474 issues have been brought to the Center. The average percentage of issues that have not gone to a formal process for FY 1997, FY 1998, and FY 1999 is 73 percent. The issues brought to the Center have involved employee to employee, employee to supervisor, supervisor to employee, and groups of employees in the same office. There have also been issues raised by outside applicants for positions within the Department.

There are numerous success stories to demonstrate the usefulness of the ADR process. The parties involved in the conflict determine success. An example of a group issue that was resolved involved a team that could not get its mission accomplished because members were unable to conduct a meeting without disruption. An IDR Center staff member facilitated a meeting for the purpose of providing a model that would allow members to voice their opinions in a positive way and reach a conclusion that the total group could accept. The group adopted the model and has been able to conduct productive meetings.

Another example involved an employee who had not received a promotion in a career ladder position. In a joint session, the employee and the supervisor were able to develop a plan containing specific goals leading to promotion.

An outside applicant felt that she had not been treated fairly in the selection process. The IDR Center staff person worked with our Office of Management and the applicant. It was determined that she could apply through a different hiring authority and would be considered for the position.

Finally, the use of ADR, previously envisioned as a mechanism solely for employees to grieve issues with a manager, has expanded to include managers seeking a mechanism for resolving disputes before they escalate.

The CAROI is a previous winner of Vice President Gore's Hammer Award, and the Association of Government Accountants recently recognized this innovative program as a government-wide "Best Practice."

Our partnership with the Commonwealth of Pennsylvania, completed last year, resulted in the closure of 119 audit findings, including some longstanding issues that had been cited as repeat findings in up to five consecutive audit reports. It also resulted in an agreement concerning \$108 million in questioned costs. This partnership saved an enormous amount of time, effort, and legal costs in dealing with complex issues that had been mired in lengthy litigation.

During the last several months, we published a guide to the CAROI process, "Discovering New Solutions through Cooperative Audit Resolution." We have distributed the guide to all states and many other educational institutions and agencies. The guide includes a description of the process used in the

very successful Pennsylvania CAROI partnership and in other instances. It is being used collaboratively by post audit personnel to integrate CAROI principles into all appropriate audit resolution activities of the Department.

What are your agency's ADR goals, including resources necessary for the future?

IDR Center

1. Conduct a staffing study against current and future IDR Center missions and functions to determine whether increased staffing is necessary.
2. Continue to evaluate the procedures used and the degree of confidentiality necessary to retain the confidence of current and potential users of the system.
3. Consider ways to publicize success stories that emphasize both the role and capabilities of the IDR Center.
4. Initiate orientation sessions with senior management support to ensure the widest dissemination of information concerning the IDR Center.
5. Develop a new IDR Center video publicizing the IDR Center.
6. Increase the number of visits to our regions by the IDR Center staff.
7. Continue to coordinate with other ADR programs in the federal sector.
8. Finalize a standard operating procedure and/or an ADR manual for employees.
9. Increase the level of training for personnel assigned to the IDR Center.
10. Expand the use of the IDR Center staff in the EEO formal process and in the training of managers and employees in conflict resolution skills.
11. Assist our Office of Management in updating the Personnel Management Instructions dealing with dispute resolution to include references to the IDR Center.

CAROI

It is anticipated that CAROI will be expanded to additional states, as the process becomes more widely known throughout the state educational agency community.

The goal of CAROI is to improve education programs and the management of those programs at state and local levels through better use of audits, monitoring, and technical assistance. A primary objective of addressing issues in a straightforward and collaborative manner is to minimize costly litigation.

CAROI also works proactively through the sharing of information via our Web site (www.ed.gov/inits/CAROI), professional organizations, and national and state conferences.

REPORT TO THE PRESIDENT ON AGENCY ADR ACTIVITIES

Agency Name: Equal Employment Opportunity Commission

ADRA ADR Contact: Nicholas Inzeo
202-663-4640

Does your agency have an ADR Policy Statement? Yes X No

What is your agency's ADR Budget?

In FY 1999 the Commission spent \$12.6 million on its ADR Program. Most of these funds were spent on the private sector mediation program to resolve charges filed under the various statutes EEOC administers. In addition a small amount was dedicated to a contract with FMCS for mediations of EEOC employee complaints.

How many FTE's does your agency dedicate to ADR?

124 FTE's through 9/30/99 for the private sector and internal EEO programs.

What Programs has your agency established during FY 1999 pursuant to the Administrative Dispute Resolution Act and the President's directive to promote greater use of ADR?

What programs has your agency expanded or improved during FY 1999?

What benefits has your agency received from these programs? What ADR success stories does your agency have to share with the President?

As part of the President's and Congressional budget initiatives to expand the use of mediation to resolve charges, field offices implemented a significant expansion of the mediation program beginning in February of this year. By the end of FY 1999, their efforts resulted in a substantial increase in mediated resolutions over last year. Field offices also developed a variety of methods for publicizing the mediation program, resulting in increased charging party and respondent participation. With the increased funding, field offices hired 95 in-house EEOC mediators and coordinators to staff the expanded program as well as full-time and temporary support staff to manage the increased workload. They also obtained mediation services by contracting with outside mediators, and utilizing the services of the Federal Mediation and Conciliation Service to ensure geographic coverage for each field office jurisdiction.

1. A total of 4,833 charges were resolved through mediation in FY 1999, almost three times the 1,631 mediation resolutions obtained in FY 1998.
2. Of the mediated resolutions, 3,478 were settlements and 1,233 were withdrawals with benefits. (The remaining 122 resolutions were reported as withdrawals without benefits.)

3. Resolutions obtained through mediation resulted in \$58.5 million in monetary benefits, three times the \$16.9 million in benefits obtained last year.
4. Approximately 65% of the mediations resulted in the resolution of a charge.
5. The average resolution time for mediated charges was reduced by 51% - from 175 days at the end of FY 1998 to 86 days this year.
6. During FY 1999, 81% of charging parties agreed to mediate, an increase over the 71% who agreed to mediate during the first quarter FY 1999, before the expanded program was initiated. Accurate data regarding acceptance of mediation offers is not available prior to October 1, 1998.
7. Also, 36% of employers agreed to mediate in FY 1999, an increase over the 32% who agreed to mediate during the first quarter FY 1999.
8. During FY 1999, 39,803 charges were referred to mediation in field offices.
9. During the year, 28,767 charges were returned from mediation into the investigative workload.
10. Field offices ended the year with 8,114 charges pending in mediation, nearly four times the 2,180 charges pending in mediation at year-end FY 1998.
11. Of 8 internal EEO complaints referred to mediation 6 were successfully resolved.

What are your agency's ADR goals, including resources necessary for the future?

EEOC requested funds for FY 2000 to resolve 8000 charges through its mediation program. However, at this time it does not appear that adequate funding will be available to meet this goal. As part of its obligation to implement revisions to Part 1614, 29 CFR, the agency will implement ADR throughout the EEO administrative process and expects that formal EEO complaints will be reduced.

REPORT TO THE PRESIDENT ON AGENCY ADR ACTIVITIES

Agency name: Department of Energy

Agency Dispute Resolution Specialist and other ADR points of contact:

Name: Phyllis Hanfling
Telephone: (202) 586-6972
Email: phyllis.hanfling@hq.doe.gov

Does your agency have an ADR policy statement?

Yes. The DOE ADR Policy, published in 1995, emphasizes the use of ADR as a management tool, to be used for prevention of disputes, early intervention in disputes and finally, to resolve pending litigation.

What is your agency's ADR budget? \$50,000, to be used to hire private sector mediators to resolve Headquarters (HQ) workplace disputes. \$75,000 has been requested for FY 2001 for the same purpose.

If you do not have a budget, how are your ADR activities funded?

All other ADR activities, including training, travel for the Dispute Resolution Specialist (DRS), and hiring mediators for cases other than HQ workplace cases are funded by affected field offices and/or program offices.

How many FTE's does your agency dedicate to ADR? One.

If none, how are your ADR activities staffed?

What programs has your agency established during FY 1999 pursuant to the Administrative Dispute Resolution Act and the President's directive to promote greater use of ADR? The Department has focused on Claims Against the Agency. Its emphasis has been twofold: first, on using creative ADR techniques for dispute prevention and, second, on using mediation at as early a stage as possible to resolve disputes.

XI. ADR techniques used to prevent litigation have included:

- (1) Ombuds programs;
 - all DOE laboratories that deal with technology transfer have recently designated ombuds to deal with any problems between the licensees and the Labs. (See other ombuds under Success Stories)
- (2) Standing neutrals;

- (3) Differing Professional Opinion Processes – used at several DOE sites to resolve disputes of technical nature, between an employee and his immediate supervisor, by raising review of the report or project to a higher level panel;
- (4) Partnering;
- (5) Reg Neg;
- (6) Training – The Office of Dispute Resolution has provided ADR training this year to over 400 DOE and contractor employees.

II To further the use of mediation at as early a stage as possible, an attorney in each Chief Counsel's office throughout DOE's field operations has been designated as ADR liaison. They have monthly conference calls with the Dispute Resolution Specialist; they attended the Society of Professionals in Dispute Resolution (SPIDR) Conference and recently completed a 3-day mediation training course. Their role is to review cases to make recommendations (with the assistance of the DRS) for appropriate early use of ADR. In addition, the Department's Litigation Tracking System is being re-designed to provide for better recording of ADR in contractor litigation. Examples of mediations are listed in "Successes".

What ADR programs has your agency expanded or improved during FY 1999? DOE's workplace mediation programs have been expanded nationwide. EEO mediations in all the field offices have increased from 28 in FY 1998 to 77 in FY 1999. Sixteen HQ workplace cases were referred to mediation in FY 1999. As of November 30, 1999, there are 17 new HQ cases referred to mediation for FY 2000. The HQ Mediation Program recently received its first budget of \$50,000, with which to hire private mediators, thus enabling it to provide experienced, professional mediators in addition to DOE trained mediators. The ability to hire mediators with no connection to the agency, no question of neutrality and no constraints on their availability, has been a great asset to the program. The Office of Dispute Resolution and the Office of Civil Rights have developed a strong working relationship. They have created a comprehensive referral package to encourage mediation at three distinct phases – in the informal stage, after formal filing and after investigation. The Deputy Secretary recently issued a memorandum encouraging the mediation of EEO cases and letters were sent to all parties in pending EEO cases recommending mediation. Cases are also referred to the Mediation Program from the Employee and Labor Relations office, from the Union and from the Employee Concerns office. Managers or employees may also request mediation directly; to encourage this early intervention, monthly training is provided at HQ by the DRS.

The Department's Employee Concerns programs, sited at each field office, have received between 400-500 concerns in the past year, dealing with a wide variety of contractor issues, including health, safety, management, fraud, waste and abuse. 80% of open concerns were closed last year by mediation, fact-finding or facilitation, with half of those fully or partially substantiated. The number of whistleblower complaints filed was reduced from 50 per year in FY 1992 to fewer than 10 in FY 1999.

In the procurement area, mediation is encouraged in grant disputes and in disputes between DOE and its contractors, as well as disputes between DOE contractors and their subs. Several are discussed under success stories. In addition, the Energy Board of Contract Appeals is a strong advocate of ADR: all its Judges have received formal mediation training; it publishes a Handbook of ADR practices; and, in addition to ADR between DOE and its contractors, it offers ADR for disputes between DOE contractors and their subs, where litigation costs would be reimbursable. In the last 3 FYs, the EBCA has provided ADR in 26 cases, with the total amount in dispute of \$21 million. Of the 20 mediations completed to date, 16 have been resolved.

What benefits has your agency received from these programs? The beginnings of a paradigm shift are evident in a change from “fighting it out” in litigation to using a “joint problem-solving” approach. This leads to reduced litigation, savings of management time, reduced cost of outside counsel for contractor cases, better mutually developed solutions and better relationships and more trust with employees and other stakeholders (such as community groups, members of Congress, contractors, etc.).

What ADR success stories does your agency have to share with the President? These illustrate use of ADR in the preventive and/or early intervention stages:

(1) Labor Proposed Joint ADR Training and Mediation Program

Wackenhut Services, Inc., is a contractor of the Department of Energy that provides a highly trained armed security force at the Savannah River Site (SRS). The site, a 300 square mile federal reservation owned by DOE, deals primarily in the management of nuclear waste from the Department’s defense mission. There are approximately 14,000 employees on site with Wackenhut employing almost 800 of them. Wackenhut’s mission at SRS is to protect nuclear materials, production facilities, property, and classified matter from theft and sabotage, with a constant concern for protecting the health, welfare and safety of employees, the public and SRS’s environment.

Wackenhut has been the security contractor at SRS since 1983. In 1990, the United Plant Guard Workers of America organized the protective force, creating Local 330 to represent the bargaining unit employees. During the first years, conflicts arose which brought about discipline and grievances as well as arbitrations. Realizing that a large amount of time and resources was being expended by both management and the union on handling grievances, a concerted effort was made to lessen the numbers of grievances. Despite a dramatic reduction in the numbers of complaints and grievances, it became evident that conflict still remained, especially between first line supervisors and union stewards. What looked on paper, like an ideal labor/management relationship, was marred by subsurface disputes at the operational level. Similar problems were being addressed for non-union employees. The opening up of more user-friendly methods of complaint resolution, including open door meetings and an employee hot line, brought the number of complaints down. Still, a better system was needed to address the conflict not addressed by formal complaints.

The union proposed the use of mediation as both an alternative to arbitration and a tool to handle conflict in the field. After some discussions, an agreement was made for the possible use of mediation. Team

members received training in the use of mediation and other ADR means. With a relationship of trust forged between union and management leaders, the stage was set to tackle the most difficult of challenges, attaining understanding and cooperation between the union steward and the first line supervisor. In early 1998, the union approached management and suggested joint ADR training of union stewards and supervisors. Management agreed to the proposal and, together with the union, moved forward in preparation for this unprecedented conflict resolution training.

In order to accommodate the entire targeted audience of 90 supervisors and stewards, four sessions were presented. They consisted of:

- *Opening remarks from the General Manager and from the Local President;*
- *Slide presentations of information on conflict, anger, management styles and problem solving;*
- *Personality test – A review of the various personality types helped the audience to realize differences and how to work with others on conflict management;*
- *A Video on conflict resolution;*
- *Role Play – Scenarios, written by union and management, were presented using factual events. This allowed the audience to closely relate to the role plays and to learn the right and wrong way of dealing with conflict; and*
- *Group Exercises – The entire class broke out into teams to role play exercises that required a win-win resolution.*

The audience was anxious to learn the methods of resolving disputes at their levels rather than having them escalated. Attendees participated in every phase of the training and upon returning to the work environment, applied these skills. The evidence of this continues as calls to both the union leadership and to management regarding issues of conflict have dropped drastically.

(2) Ombuds Programs

The Sandia National Laboratories Ombuds Program, available to any Sandian or anyone in conflict with Sandia, was involved in over 400 conflict cases during FY 1999. This is consistent with the annual case load over the seven years the program has been in place. Most of the conflicts were employee related, with a few involving suppliers, technology transfer partners or DOE. 56% of the conflicts were between superiors and subordinates (at all levels); 8% were conflicts between peers; and 19% between employees and infrastructure functions (e.g., HR, finance). The savings accrued by Ombuds involvement was principally through improved productivity, lower turnover, and higher decision quality. The case rate of 400 in FY 1999 has been very conservatively estimated to generate savings of at least \$600K (50% more than the program cost) and improvements in morale that cannot be measured. Litigations and

EEOC charges against Sandia continue well below the levels experienced prior to the creation of the program.

A pilot ombuds program was implemented within the Bonneville Power Administration (BPA) in April 1998 in an effort to ensure a positive and supportive work environment, particularly in the Apprenticeship and Craft Trainee Programs, by providing informal and confidential assistance in resolving work-related concerns. During the first pilot year, two ombuds handled 65 individual contacts and provided a variety of services including counseling, information, informal go-between, mediation, referrals and follow-up after resolution and for ongoing cases. They also provided feedback to senior management on workplace issue trends and provided conflict management training within the organization. This program is currently being evaluated for possible expansion.

(3) Neutral Expert Opinion

Leaks were discovered at the welding joints in a newly installed cooling system at Fermilab. Fermilab was preparing for a “latent defect” claim against the general contractor and the welding subcontractor. However, because of a long and excellent business relationship with the contractors, they agreed to bring in an outside metallurgical expert to examine the mysterious leaks and offer an opinion as to their cause and correction.

In less than a day, the expert determined that microbes from the tap water used by Fermilab to test the system were responsible for attacking the welding joints. If water was not kept moving through the system, it should have been flushed out with distilled water. Thus, the responsibility for the problem lay with Fermilab and not the contractors. The potential saving of \$25,000 or more in internal time and resources for preparing for and asserting a claim against the contractors was minimal, compared to the important intangibles. Fermilab was able to maintain goodwill and integrity in the eyes of the contractors, who willingly made people and resources available to redo many suspect welds in record time. Due to this experience, Fermilab will be inserting in future contracts a provision for the parties to identify an outside expert early on, to serve as a standing neutral, for any construction-related disagreements that may later arise.

(4) Elk Hills Standing Neutral

In connection with the privatization of the Elk Hills Naval Petroleum Reserve for \$3.65 billion on February 5, 1998, DOE developed a unique ADR process in which a standing neutral (called an “Independent Legal Advisor” or “ILA”) is under contract to handle discrete legal issues associated with the finalization of “equity” (or ownership rights to subsurface mineral rights) with Chevron USA Production Company, a minority owner in the field. This ADR process, which is still on-going, allows the parties to refer legal issues to the ILA that might otherwise entirely bog down the technically-driven equity finalization process or be tied up for years in litigation. The first task of the ILA is to try to mediate an agreement between the parties; however, in the absence of a settlement, the ILA issues a non-binding decision on the issue that either party may later challenge in a designated administrative

forum. Over the past 2 years, five issues have gone through the ILA process, resulting in 2 settlements and 3 decisions of the ILA.

(5) Innovative Reg-Neg For Ballast Energy Efficiency Standards

In response to an invitation by lighting industry representatives and energy efficiency advocates, DOE facilitated two days of negotiations between these parties on revised energy efficiency standards. In the end, the parties agreed in principle on revised standards to recommend for DOE to consider in drafting a notice of proposed rulemaking. The negotiations, which resembled a mediation, had a variety of advantages: (1) DOE obtained better quality information and lowered political and litigation risks; (2) industry obtained certainty on standards for the immediate term; and (3) the energy efficiency advocates obtained the highest revised standards that are likely to be implemented and effective pledges of action to comply with the standards.

(6) E-Mail Mediation

A group of Headquarters employees was offended by inadvertent pictorial stereotyping in a diversity brochure. After hearing complaints and discussions in the halls, the Dispute Resolution Specialist suggested mediation. In the process of using e-mail to identify the necessary parties and schedule a mediation, the parties began to explain their feelings to each other and to provide historical context. The discussions moved from incrimination to understanding, so that DRS was able to ask whether a meeting was necessary. The parties replied that they were satisfied. They understood each other's feelings, steps were put in place to remedy what had happened and prevent its reoccurrence and a larger confrontation was prevented.

(7) Telephonic Mediation

A grant dispute between the Federal Energy Technology Center (FETC) and a university was mediated telephonically. FETC believed that the university deviated from the original purpose of the grant without explanation for the deviation in the final report and that they failed to include test results that the report represented was performed. After much discussion and e-mail, the mediator held a conference call with FETC's attorney, contracting officer and the university's contracting officer and principal investigator. Both sides heard new information and corrected some misperceptions. The case was settled without litigation and the relationship between FETC and the contractor was not damaged.

(8) Grant Disputes

A. The Hanford Field Office had a grant dispute with a Native American tribe. The Department believed that two contracts placed under the grant constituted a material non-compliance and was prepared to disallow the costs, thus, making the tribe repay almost \$300,000. However, DOE was concerned about "winning the case and losing the relationship." DOE suggested mediation, pursuant to 10 C.F.R. § 600.22(b) which provides for mediation of grant disputes, prior to a contracting officer

decision. The tribe accepted and the case was mediated by a mediator with whom the tribe was familiar. It was settled and approved by the Tribal Council. Rather than disallowance of the costs, the settlement used an offset over a 2-year period by reduction of anticipated funding. By entering into mediation early, litigation was avoided, the tribe will continue to receive DOE grant funds, the parties achieved a better understanding of each other's concerns and the long-term relationship was preserved. DOE estimated a savings of \$50,000 for internal staff time if the case had gone to the Board of Contract Appeals.

B. FETC and one of its cost share Clean Coal participants had a dispute over Agreement language and its application to an unanticipated situation arising under the Agreement. The amount in controversy exceeded \$10M. Six months of informal negotiation between the parties produced no satisfactory resolution and formal litigation was anticipated. The Office of Dispute Resolution suggested mediation and put the process in place between the parties. The two days of face-to-face, informal, but controlled mutual dialogue, versus formal, adversarial proceedings enabled each of the parties to view in a much more objective, unbiased, unemotional (and beyond strictly legalistic) manner, the merits and ramifications of their respective positions in a professional atmosphere. The parties resolved their differences consistent with legal basis AND mutually acceptable private, Government and DOE program interests. The mediation process enabled the parties to accommodate those broad-ranged needs in a much more positive and satisfactory manner than could have been achieved through litigation, regardless of forum. The expenses for the mediator's time and travel did not exceed \$3500, and were split equally between the parties. Litigation and/or arbitration expenses for DOE alone would reasonably be expected to be 5 to 10 times that total amount, would have consumed significantly more time, and most likely would have produced a much less mutually-satisfactory result, to the detriment of program and over-all Government objectives.

(9) Contract Disputes

A. A subcontractor to a DOE laboratory completed nuclear decommissioning and decontamination work in 1997 and submitted a change order for \$2.8 million. Almost two years later, there had been no resolution and there was a high level of distrust and animosity between the parties. The DRS was contacted by the contractor's Congressman, and mediation was arranged. The case was settled shortly thereafter in a 2-day mediation, thus avoiding a hearing at the DOE Board of Contract Appeals. The laboratory estimated that it saved 5 weeks of work for an attorney and 3-4 business/technical people.

B. A subcontractor was hired to manufacture and install equipment at over 100 sites. The subcontractor requested an equitable adjustment to reimburse \$2.5 million in costs due to changed conditions and delays. The parties had been unable to resolve the dispute by direct negotiations and faced an arbitration hearing.

The case was settled in a 2-day mediation, with the laboratory paying a settlement amount and providing a letter of recommendation for the equipment. The subcontractor agreed to do some follow-on work for which it was uniquely qualified, but which it had refused to do because of the pending dispute. The parties were able to avoid the costs of preparing for and conducting an arbitration that would have involved factual disputes at about 80 different installations. It would have diverted several "person weeks" of staff time from work assignments and might have necessitated the hiring of outside counsel.

C. A defective pricing claim by a subcontractor to Sandia National Laboratory was resolved by mediation with the DOE Board of Contract Appeals. An important benefit of mediation was preserving the relationship with an important supplier of critical components, with whom the laboratory will be able

to continue doing business in the future. The estimate by outside counsel, if this case had been tried, was \$150,000.

(10) Termination Case

A contractor at Yucca Mountains terminated an employee who held a Commercial Driver License (CDL), based on a positive urine analysis. Under Department of Transportation regulations, an individual holding a CDL, who has a positive urine analysis, may not drive vehicles. Since he was unable to operate the vehicles he was hired to drive, he was terminated. It was soon determined that an error had been made, probably due to insufficient control of the urine samples.

The employee was quite upset about the handling of the situation, including non-payment of back pay, lack of an apology, damage to his reputation and disrespect by an immediate supervisor. The parties agreed to mediate and resolved the case in several hours. An important part of resolving this case was having the right people at the table. Senior management from the contractor flew in from their national headquarters. They offered a personal apology for mishandling the situation, assured the employee that he would be treated with the same respect as before the incident occurred and stated that changes had been made to the drug testing process. A check for full back pay was cut and given to the complainant at the mediation.

(11) Construction Case

In a complicated construction case with 13 parties, a DOE contractor at the Idaho site was sued for \$15M. Attorney fees were costing \$100,000-300,000 per month. After a 2 ½ day mediation with all parties and counsel, a draft agreement was reached and later finalized. Estimated savings for outside counsel, had this case gone to trial, were \$1M, with additional costs for a probable appeal. As this would have been a document-intensive case, additional internal cost savings were estimated at \$500,000.

(12) Whistleblower Case

A contractor employee filed a whistleblower complaint. Although the company anticipated winning if the case went to a hearing, it realized that it would still have an unhappy employee. Therefore, the company suggested mediation, and approached it as a problem-solving tool. The case settled with the help of a skillful mediator who provided feedback to the employee on his communication style. The employee is now happy and functioning much better in the workplace and the manager reports an improvement as well.

What are your agency's ADR goals, including resources necessary for the future? The Office of Dispute Resolution needs additional FTE's to coordinate the Department's ADR Program. The office intends to focus on preventive ADR: (1) creating an Integrated Conflict Management System, with an ombuds at the center, at HQ and all field offices; (2) providing or coordinating increased training for

managers and attorneys on conflict management and use of ADR; (3) ensuring that all contracts, grants, and MOU's include mediation provisions; and
(4) encouraging standing neutrals and partnering for all large contracts.

In addition, continued emphasis will be placed on mediating at as early a stage as possible in all appropriate disputes.

REPORT TO THE PRESIDENT ON AGENCY ADR ACTIVITIES

Agency name: Environmental Protection Agency

Agency Dispute Resolution Specialist

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Several additional EPA employees have responsibility for ADR program management or delivery of ADR services. These personnel are located at EPA Headquarters and in all ten Regions. The extended network of ADR staff at EPA cover most of the Agency's program offices. Supplemental contact information may be obtained through the Agency's Dispute Resolution Specialist.

Does your agency have an ADR policy statement? Yes ☐ No ☒

EPA currently has several program-specific policies governing the use of certain ADR techniques in specific contexts. Such policies include: Guidance on the Use of Alternative Dispute Resolution in EPA Enforcement Cases (1987), EPA's Public Participation Policy (1981), and Procurement Policy Notice No. 97-02 (1997) (governing the use of ADR in contracts disputes). In addition, the Administrator has indicated her commitment to the use of ADR in Agency activities through a recent memorandum (Oct. 27, 1998). Nonetheless, the Agency still has a need for a more comprehensive policy that will address the use of ADR across the Agency's programs and Regions.

Work has begun to develop a policy addressing the use of ADR at EPA, development of new ADR programs, enhancement of existing ADR programs, and ADR training for Agency staff and managers. This effort will satisfy the requirement of the ADRA that all federal agencies adopt a policy that "addresses the use of alternative means of dispute resolution and case management." A two-step process is underway to meet the Agency's policy needs: (1) issuance of a cross-program interim policy that highlights EPA's ADR experience and expresses a strong commitment to ADR; and (2) formation of a work group to draft and issue a final Agency-wide policy for appropriate use of ADR within the Agency. It is also anticipated that program-specific guidances will be developed that are consistent with the final Agency-wide policy.

It is anticipated that the interim policy will be completed and published in the Federal Register in the next few months. The more comprehensive policy, incorporating several component parts, is expected to be complete by the end of the year 2000.

What is your agency's ADR budget?

EPA does not currently earmark funds for alternative dispute resolution in its budget. Support for ADR functions within the Agency is funded from individual program offices. A rough indication of the Agency's spending on ADR can be gleaned from project orders established under the Agency's neutral services contract, which provides services of dispute resolution professionals for a wide variety of

activities, including: convening, conflict or issues assessment, facilitation, mediation, training, and services to assist stakeholder involvement activities. New projects ordered through this contract have averaged between \$3-4 million per year.

Dependence on program dollars for neutral services ensures that EPA's program offices are vested in a particular project, although this type of funding mechanism also gives rise to "orphan" projects, i.e., potential projects with merit but no readily available source of funding. The various ADR programs at the Agency continue to look for creative ways to overcome this funding gap.

How many FTE's does your agency dedicate to ADR? 13

Dedicated FTEs include employees responsible for ADR program management and those involved in the direct delivery of ADR services, such as in-house facilitators and ombudsmen. The 13 FTEs support more than 13 individual positions, as some positions are part-time. Of the nine dedicated FTEs located at Headquarters, five are ADR program management positions, and four are ombuds positions. The remaining four FTEs represent a handful of Regional positions, split roughly equally between program management and in-house facilitators..

In addition to the dedicated ADR FTEs, many additional EPA personnel are involved in ADR program management or direct delivery of ADR services on a collateral duty basis. Personnel working with ADR on a collateral duty basis can be found at EPA Headquarters and in every Region.

What programs has your agency established during FY 1999 pursuant to the Administrative Dispute Resolution Act and the President's directive to promote greater use of ADR?

C Central ADR Program Management

In October 1998, the Administrator appointed a Senior Counsel for Alternative Dispute Resolution who serves as EPA's dispute resolution specialist for purposes of the ADRA. The Senior Counsel assembled a team of specialists from Headquarters and the Regions to support Agency-wide ADR program expansion and development and to work on the design of a central ADR office for EPA. This new office, the Conflict Prevention and Resolution Center, will begin its work in FY 2000.

C Headquarters Workplace Dispute Mediation Program

EPA developed a workplace mediation program to address grievances and discrimination complaints at Headquarters. During 1999, a team composed of employees and union representatives from Headquarters established the foundation for the workplace mediation program. This team used the workplace mediation program experience of six federal agencies as a benchmark, and incorporated those agencies' successes in program organization and implementation into the proposed EPA mediation program. EPA expects staff and managers to use the new program with confidence. Implementation of the program will begin in January

2000, with a year-long pilot phase focusing on disputes that are the subject of discrimination complaints or subject to the Agency's negotiated grievance or administrative grievance procedures. While the pilot program focuses on disputes at Headquarters, all EPA Regions are preparing to offer mediation for discrimination complaints beginning in January 2000, in accordance with recently revised Equal Employment Opportunity Commission regulations.

C Interagency Agreements with the U.S. Institute for Environmental Conflict Resolution

During FY 1999, EPA developed a working relationship with the U.S. Institute for Environmental Conflict Resolution (Institute) to enhance the Agency's own goals for ADR use in the environmental arena. Two initiatives of note are supported through interagency agreements with the Institute. First, EPA has engaged the Institute to help develop a roster of Environmental Dispute Resolution and Consensus Building Professionals. The roster is scheduled to be operational in January 2000. Second, the Institute will be working with EPA to develop a training module on the use of ADR in the context of environmental justice and civil rights complaints. The training is designed to introduce a broad spectrum of stakeholders to ADR techniques.

What ADR programs has your agency expanded or improved during FY 1999?

Current applications of ADR at EPA reflect the breadth of the alternative dispute resolution field, both in terms of the variety of ADR techniques utilized and the types of disputes or potential disputes that are addressed. ADR work is occurring across programs and Regions and includes techniques such as mediation, facilitation, convening, early neutral evaluation, consensus processes, cooperative problem solving, interest-based negotiation, and use of ombudsmen. ADR is being used to advance EPA's programmatic and administrative objectives, with applications in areas such as administrative adjudications, enforcement, formal and informal petition procedures, policy development, stakeholder involvement, public participation, and workplace disputes. The following items describe specific areas that have been expanded or improved over the past year.

C New Neutral Services Contract

In February 1999, the Agency awarded a new neutral services contract to Marasco Newton Group, Ltd. The neutral services contract is a vehicle for Agency program offices and Regions to access neutral services for dispute resolution activities such as: convening, conflict or issues assessment, facilitation, mediation, and other services to assist EPA stakeholder involvement activities. The Marasco-Newton contract is a five-year task order contract with a total ceiling of \$ 41,000,000. Although the Marasco Newton contract has been in effect for less than one year, 44 projects with a value of \$4.4 million have already been initiated. The current projects on the contract are evidence of the broad range of available neutral services. Ongoing projects include use of ADR professionals for policy dialogues, enforcement cases, training design and delivery, and facilitation of public meetings. In an innovative approach, the contract includes "just-in-time"

delivery orders which make neutral services for a particular category of disputes available on an expedited basis.

C ADR Use in Brownfields Pilots

EPA's ADR program within the Office of Enforcement and Compliance Assurance (OECA) launched a pilot project on the use of facilitation professionals at several Brownfields sites over the past year. Brownfields are abandoned, idled, or under-used industrial or commercial properties where expansion or redevelopment is complicated by real or perceived environmental contamination. The purpose of the facilitation pilot project is to increase and enhance community involvement in the decision making process for assessment of potential site contamination at Brownfield sites.

C Expanded ADR Use in Administrative Enforcement Adjudications

EPA's Office of Administrative Law Judges (OALJ) sharply expanded its use of ADR as an alternative method for concluding administrative enforcement cases. Current policy is to offer the use of ADR in virtually all of the cases that come under the jurisdiction of OALJ. The objective of OALJ's mediation program is to encourage parties to exchange views informally and then try to develop a compromise resolution that answers some of the basic interests of both parties. OALJ has found that this process is generally much faster and less resource intensive than traditional administrative litigation.

What benefits has your agency received from these programs?

- C Resolution of conflicts and controversies with outcomes that are acceptable to all parties
- C More environmentally beneficial resolutions through the negotiation of supplemental environmental projects, agreements to pilot new technologies, and faster compliance
- C Prevention of controversies
- C Enhanced public participation in Agency decision making
- C More constructive stakeholder involvement in policy development and site remediation decisions
- C Increased interest throughout the Agency, the regulated community, and the public in the potential benefits of ADR techniques

What ADR success stories does your agency have to share with the President?

C Recent ADR Initiatives Focus on Major Agency Priorities

EPA has focused its ADR program development efforts on issues that also constitute major priorities for the Agency. For example, the Senior Counsel for Alternative Dispute Resolution, the Office of Civil Rights, and the Office of Environmental Justice have been working together to explore ways to use ADR techniques in addressing environmental justice and matters arising under Title VI of the Civil Rights Act of 1964. The Agency's emphasis on cleanup and redevelopment of urban waste sites is supported through the Brownfields facilitation pilot projects. In addition, EPA is pursuing opportunities to demonstrate the use of ADR techniques in the area of environmental permitting. The use of collaborative processes to enhance public

participation during permitting activities may assist the Agency in meeting some of its objectives for the next generation of environmental permitting. Specific success stories from each of these priority areas are provided below.

C ADR Use in the Resolution of Title VI Complaints

The Office of Civil Rights is currently piloting the use of ADR as a tool for resolving formal administrative complaints under Title VI of the Civil Rights Act. In one recent case, a community organization in Hartford, Connecticut charged the Connecticut Department of Environmental Protection with improperly siting and permitting a landfill. EPA Region 1 provided a mediator who assisted the community organization, the State, and the developer of an urban renewal project to reach an agreement that the negotiating parties felt was a fair way to proceed. In another case, EPA Region 9 hired a neutral third party to do an initial objective assessment of complaint made by a community association against the California Department of Toxic Substance Control. The neutral was also asked to determine the willingness of the parties to participate in an initial meeting to discuss the possibility of using a mediated process for resolving the controversy. The neutral's report provided the Region and the involved parties with a better understanding of the situation and each others' concerns and interests. Even though there was no agreement to attempt to resolve the complaint through mediation or any other facilitated problem-solving process, the Region found the effort worthwhile.

C Success in the Brownfields Facilitation Program

The Brownfields facilitation pilot mentioned above in 7., consists of projects at ten specific Brownfields sites representing a diverse range of redevelopment projects and communities across the country. A facilitation/mediation professional has been engaged by EPA to work with the parties and public at each site. Each of the pilot projects has approached the facilitation process in a unique way so as to best address the dynamics of the particular site. In one of the pilot projects, the Brownfields project manager approached Regional and Headquarters ADR staff seeking assistance in the handling of a difficult situation at a Brownfields project site. One landowner appeared to be creating an intractable obstacle to remediation and redevelopment efforts. The services of a professional facilitator helped clarify options and reestablished communications between participants at this site. Ultimately, the difficulties presented by the landowner were overcome and a redevelopment plan was generated in which the jurisdiction of the Brownfields project was shifted and doubled in area. After EPA's funding hours for the facilitator were consumed, the parties independently agreed to cover the costs of continued facilitation services -- a true measure of success for this pilot.

C Refinery Permitting Implementation Project

The Office of Air and Radiation and the Senior Counsel for ADR are cooperating on a project that employs an ADR technique in preparing for future permitting activities associated with an anticipated regulatory program limiting gasoline sulfur levels. New gasoline standards may trigger permitting obligations for refineries under the Clean Air Act. EPA engaged dispute resolution

professionals to conduct a convening in an effort to engage a broad spectrum of stakeholders as the Agency considers what policies will govern refinery permitting under the new program. The Agency hopes that stakeholder involvement in the development of refinery permitting policy and planning for future permitting activities will yield better results for the refineries, the permitting authorities, and surrounding communities.

C Resolution of an Enforcement Action Through Multiple ADR Techniques

The use of a unique multi-phased ADR process assisted private parties and the United States to reach an agreement in an enforcement action involving alleged violations of several environmental statutes. With the assistance of a neutral convener provided by EPA, the parties designed and implemented an ADR process that used an early neutral evaluation to address factual disputes followed by a mediation to facilitate settlement negotiations. The use of ADR saved all parties the time and expense of litigation and provided the basis for a settlement that resolved all legal issues between the parties and established supplemental environmental projects benefitting the local community.

C Use of ADR in Organizing a Policy Dialogue

Dispute resolution professionals were hired to conduct a neutral third-party convening assessment to identify major stakeholder interests associated with the development of a policy governing testing and screening for a certain class of chemicals. The dispute resolution professionals engaged in an extensive consultation with representatives of affected interests through telephone and in-person interviews, numerous conference calls, and facilitated discussions with approximately 100 people. Ultimately, the professionals made recommendations regarding the make-up of an advisory committee and initial goals for the committee. The result of the convening effort was a broad-based membership on the advisory committee, as a means of ensuring that all major stakeholder groups had their views and interests balanced against the views and interests of others as the committee adopted a consensus approach to policy development.

C ADR Yields Better Site Remediation Decision

A major initiative of the Agency's hazardous waste program is to enhance involvement of the public in site assessment and remediation decisions. One case of note involved a manufactured gas plant that dumped large amounts of waste into the adjacent wetlands and a canal for over 70 years, seriously contaminating groundwater and posing an unacceptable risk to wildlife. EPA's original cleanup plan for the site was met with strenuous community opposition for being too expensive and intrusive. After months of controversy, a site Coordinating Council was created as a way to begin a mediated process that would ensure meaningful involvement of all parties, including companies potentially responsible for the cleanup, state and federal regulatory agencies, and local interests. Outside dispute resolution professionals were hired to facilitate Council activities. Ultimately, the Council reached consensus on a recommendation for an alternative site

cleanup plan that met local and regulatory needs -- all at a cost of about one-tenth the original proposal. EPA's final remedy decision adopted the Council's recommendation.

C Multiparty Allocation Effort

Under EPA hazardous waste laws, private parties potentially responsible for the cleanup of hazardous waste landfills and other contaminated sites must reach private agreements on the allocation of responsibility for the cost of remedial actions. These allocation efforts are often complicated by a large number of parties, high site costs and lack of data regarding site contamination. EPA supports the allocation efforts of private parties through provision of neutral convening services. In a case of particular note, EPA provided private parties with an Agency convening professional to develop and initiate an allocation effort between over 60 parties at an extremely complicated site with cleanup costs in excess of \$100 Million. Through the services of the convener, the parties were able to organize and undertake an allocation process with the assistance of additional ADR professionals that proved the basis of a settlement of their liability for the site with the United States.

What are your agency's ADR goals, including resources necessary for the future?

- C Complete the development of an Agency-wide policy on the use of ADR
- C Launch a centralized ADR office
- C Expand the capacity of ADR staff at Headquarters and in the Regions to support effective use of ADR
- C Broaden awareness of ADR applications and benefits throughout the Agency
- C Improve availability of ADR by identifying additional funding, neutral service vehicles, and qualified dispute resolution practitioners
- C Establish additional in-house capacity for EPA personnel to serve as neutrals in appropriate circumstances.
- C Target ADR training opportunities to support EPA program initiatives
- C Support efforts within EPA and through interagency work to develop diversity in the field of ADR practitioners

REPORT TO THE PRESIDENT ON AGENCY ADR ACTIVITIES

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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EXECUTIVE SUMMARY

The United States Environmental Protection Agency has a rich history of using alternative dispute resolution (ADR) techniques ranging from traditional mediation to innovative processes aimed at enhancing stakeholder involvement in Agency decision making. A recent statute and Presidential directive provided the impetus for an examination of the Agency's existing ADR programs and planning how ADR will be used in the future. As a result of this effort, several organizational and programmatic improvements in the Agency's approach to ADR were implemented. This report examines ADR activities at EPA, with a focus on recent initiatives and accomplishments. Highlights include:

C Implementation of the Administrative Dispute Resolution Act of 1996

The Administrative Dispute Resolution Act (ADRA) governs the use of consensus and agreement-based dispute resolution mechanisms by federal agencies. The ADRA contains several requirements that relate to the administration of an agency's ADR program. In fulfillment of these statutory requirements, EPA has: (1) chaired one of the sections of the Interagency Alternative Dispute Resolution Working Group established by the Attorney General and participated actively in three other sections; (2) appointed a senior official to serve as the dispute resolution specialist for the Agency; (3) designed a central office for ADR program management and development; (4) expanded the network of Regional staff with ADR responsibilities; and (5) initiated a process to develop a final Agency-wide policy on the appropriate use of ADR at EPA.

C Introduction of New ADR Programs

EPA has focused its ADR program development efforts on issues that also constitute major priorities for the Agency. A major new ADR initiative is the workplace dispute mediation program to be launched in January 2000. In addition, several new initiatives support the Agency's environmental objectives. For example, the Agency has been exploring ways to use ADR techniques in addressing environmental justice and matters arising under Title VI of the Civil Rights Act of 1964. The Agency's emphasis on cleanup and redevelopment of urban waste sites is supported through the Brownfields facilitation pilot projects. In addition, EPA is pursuing opportunities to demonstrate the use of ADR techniques in the area of environmental permitting.

C Improvements in Existing ADR Programs

EPA's existing ADR programs have contributed to the Agency's status as a leader in the use of ADR in the federal sector. In addition, these programs established the foundation for new and expanded ADR programs and initiatives. EPA's mature ADR programs are each different in terms of operations and purpose, but all have embraced the value and utility of neutral services to advance the Agency's objectives. Existing ADR programs include: (1) a variety of stakeholder involvement programs that make use of third-party neutrals; (2) an active enforcement ADR

program; (3) innovative Regional approaches towards ADR; and (4) a high volume mediation program offered by EPA's Administrative Law Judges.

C Establishment of Partnerships with Other Federal Agencies

EPA has been privileged to partner with several other federal agencies in joint efforts to enhance the utility and effectiveness of ADR throughout the federal sector. The Agency has both served as a mentor and received the benefit of expertise from other agencies as all federal agencies look at ways to develop their ADR programs. EPA has also entered into interagency agreements with the U.S. Institute for Environmental Conflict Resolution (Institute) in order to: (1) broaden access to ADR practitioners for environmental disputes; and (2) take advantage of the Institute's expertise in designing specialized trainings for targeted groups.

The activities and programs documented in this report are a credit to EPA's willingness to use innovative tools such as ADR to achieve the Agency's broader programmatic and organizational objectives. These innovations provide a foundation for a more complete assessment of how use of third party neutrals may improve Agency decision making and prevent and resolve conflict.

II. Introduction

Alternative Dispute Resolution (ADR) includes a wide variety of processes in which third-party neutrals assist parties in the prevention and resolution of disputes. As practiced at the United States Environmental Protection Agency (EPA), ADR is more than simply an alternative to traditional litigation. It is a tool for better negotiation as well as a means of enhancing the quality of Agency decision making. Applications of ADR at EPA reflect the breadth of the alternative dispute resolution field, both in terms of the variety of ADR techniques utilized and the types of disputes or potential disputes that are addressed. ADR work is occurring across programs and Regions and includes techniques such as mediation, facilitation, convening, early neutral evaluation, consensus processes, cooperative problem solving, interest-based negotiation, and use of ombudsmen. (These techniques are described in the glossary of terms below). ADR is being used to advance EPA's programmatic and administrative objectives, with applications in areas such as administrative adjudications, enforcement, formal and informal complaint procedures, policy development, stakeholder involvement, public participation, and workplace disputes.

Glossary of Selected ADR Terms

The ADR techniques listed here are those that are most frequently used at EPA and referred to in this report. The list is not intended to be exhaustive of all possible ADR applications.

- C Mediation: Mediation is a confidential, informal process in which the disputing parties use a neutral third party to assist them in trying to work out a mutually acceptable solution to a problem.
- C Facilitation: Facilitation is a voluntary, informal, and flexible process of communication guided by a third-party neutral. Facilitation can be used for meeting management purposes, or as a technique to engage parties in a productive discussion about a problem or challenge. By itself, facilitation may or may not result in resolution of any issues in controversy.
- C Convening: Convening is a process used to identify issues, interests, and sometimes parties to a dispute or potential dispute. The goal of a convening is to assess the potential for use of ADR techniques in seeking resolution of a problem and to recommend a process that would best help address the issues at hand.
- C Early Neutral Evaluation: Early neutral evaluation allows the parties to a dispute to receive an informal neutral evaluation of the strength of each party's position in a matter in controversy. The evaluation is nonbinding, but may be useful in promoting settlement.
- C Consensus Processes: A consensus process is any method by which all affected parties (stakeholders) are brought together at an early stage for the purpose of developing a solution to a present or anticipated problem. Consensus processes that qualify as ADR involve a third-party

neutral in a facilitation or mediation role. The term “consensus process” as used at EPA typically refers to a mechanism for policy or regulatory development.

- C Cooperative Problem Solving: Cooperative problem solving involves a decision by parties facing a disagreement or potential disagreement to collaborate on a solution rather than insist on competition and compromise. Cooperative problem solving assisted by neutrals from within or outside of the Agency has been useful in addressing internal problems and challenges.
- C Interest-based Process: An interest-based process seeks to generate creative solutions to problems between parties in an ongoing relationship. It makes extensive use of brainstorming and identification of creative solutions to address the interests of the participants.
- C Ombudsmen or Ombuds: An ombudsman (or ombud) is an Agency official who is authorized to accept complaints and look into whether something can be done to address a particular concern. Ombuds do not have authority to change decisions, but they try to facilitate responsive solutions to problems raised in complaints. There are currently ombud functions in three programs at EPA (pesticides, hazardous waste, and small business).

This report examines ADR activities that have been used at EPA, with a focus on recent initiatives and accomplishments. Section II discusses the Agency’s implementation of the Administrative Dispute Resolution Act, the principal statutory authority on federal sector use of ADR. That section also discusses activities undertaken at EPA in response to a Presidential directive on ADR issued in May 1998. Section III of this report highlights new ADR programs or activities that have been initiated at EPA over the past year. Section IV outlines the Agency’s more mature ADR programs and provides examples of how those programs continue to develop and advance EPA’s environmental objectives. Section V presents a series of exciting and relatively new partnerships between EPA and other federal agencies designed to enhance the utility and effectiveness of ADR throughout the federal sector.

III. Accomplishments in Implementing the Administrative Dispute Resolution Act of 1996 and in Fulfilling the President’s Memorandum on ADR (May 1, 1998)

The Administrative Dispute Resolution Act (ADRA), 5 U.S.C. § 571 - 584, governs the use of consensus and agreement-based dispute resolution mechanisms by federal agencies. The Administrative Dispute Resolution Act of 1996 permanently reauthorized the ADRA, thereby confirming that alternative dispute resolution (ADR) techniques are legitimate processes that should be used by federal agencies in appropriate circumstances.

The ADRA contains several requirements that relate to the administration of an agency’s ADR program, including appointment of a senior official to serve as the agency’s dispute resolution specialist and development of a policy to address the use of ADR within an agency. In addition, the ADRA authorizes an interagency committee to be established by the President to facilitate ADR use within the executive branch.

By Presidential Memorandum issued May 1, 1998, President Clinton established an interagency committee as contemplated by the ADRA. In the course of establishing this committee, the President also instructed agencies to take steps to “(1) promote greater use of mediation, arbitration, early neutral evaluation, agency ombuds, and other alternative dispute resolution techniques, and (2) promote greater use of negotiated rulemaking.”

The following subsections describe the specific actions that EPA has taken to fulfill the requirements of the ADRA and the Presidential Memorandum.

A. Participation in the Interagency Alternative Dispute Resolution Working Group

The President’s Memorandum of May 1, 1998, established an Interagency Alternative Dispute Resolution Working Group (IADRWG) to be convened by the Attorney General and consisting of representatives of the heads of federal departments and agencies. The mission of the working group is to coordinate, promote, and facilitate the effective use of dispute resolution processes within Federal agencies. The IADRWG is organized into five subject matter sections that address the use of dispute resolution processes in: (1) civil enforcement; (2) claims against the government; (3) contracts/procurement; (4) workplace disputes; and (5) small agencies. The substantive work of the IADRWG has occurred through the section activities, in which participating agencies have shared expertise and worked to the expand the capacity of the federal sector to either initiate or enhance specific types of ADR programs.

EPA has taken a leadership role in the IADRWG. The Agency’s Senior Counsel for ADR chairs the Civil Enforcement Section, which includes 24 federal agencies that are either initiating or enhancing ADR programs to support their enforcement activities. EPA’s ADR staff within the Office of Enforcement and Compliance Assurance have taken the lead in designing a year’s worth of programs for the Civil Enforcement Section, covering topics such as dispute systems design, training, funding issues, evaluation, ethics, and confidentiality. EPA staff are also engaged in mentoring activities for other agencies that are initiating ADR programs in the civil enforcement context. More information about EPA’s mentoring role is described in section V.B. of this report. In addition to leading the Civil Enforcement Section, EPA has been active in the claims, contracts, and workplace sections of the IADRWG. Through this participation, EPA has benefitted from the expertise of other agencies with mature ADR programs in those areas.

As the IADRWG enters its second year of existence, the Attorney General has announced the creation of an ADR Advisory Council, to be comprised of senior government officials responsible for ADR programs at their agencies. The Attorney General extended an invitation to EPA to serve on the Council. The Council will address policy issues that may arise during the implementation of federal ADR programs. The Attorney General’s invitation recognizes EPA’s status as a major contributor to the advancement of ADR in the federal sector.

B. Designation of a Senior Counsel for Alternative Dispute Resolution

In October 1998, Administrator Browner appointed Bob Ward to serve as EPA's Senior Counsel for Alternative Dispute Resolution. This appointment fulfills the ADRA requirement to designate a senior official as the Agency's dispute resolution specialist. In addition, Administrator Browner used the occasion to reiterate the Agency's commitment to the use of ADR in resolving existing disputes and preventing future conflict. The Administrator noted that the use of ADR within the Agency is consistent with and supportive of the Agency's reinvention goals.

C. Establishment of the Conflict Prevention and Resolution Center

Another significant step forward in the evolution of EPA's ADR program will occur with the establishment of a new Conflict Prevention and Resolution Center (CPRC). Based upon numerous interviews with officials throughout EPA, there is enthusiastic support for the formation of such a Center. Establishment of the CPRC will provide oversight and compliance with the ADRA and encourage greater integration of dispute resolution techniques into EPA activities.

The CPRC's specific mission will be to fulfill obligations under the Administrative Dispute Resolution Act of 1996, the Alternative Dispute Resolution Act of 1998 and other relevant laws and policy directives aimed at ensuring effective use of ADR in and by the Federal government. To this end, the main functions of the CPRC will be to assist Agency offices in identifying "appropriate" uses of neutral third parties; make neutral services more readily available; design ADR processes; and provide ADR awareness training. Consistent with the ADRA, the Center's functions also will include: coordinating the development and implementation of Agency policy, guidance and regulations addressing the use of ADR; assisting in the development and effective coordination among ADR programs in offices throughout the Agency; consulting on ADR case selection and management; supporting outreach on ADR; recordkeeping to ascertain the benefits of ADR; and coordinating EPA participation in ADR activities outside of the Agency. The consolidation of these functions has benefits for the Agency, such as the availability of a team of professionals dedicated to this specialized area and more efficient tracking of EPA's use of ADR techniques.

Moreover, establishment of the CPRC will serve a number of internal and external customers in the provision of additional opportunities to consider the application of ADR techniques to achieve EPA objectives. For example, the CPRC may provide mediation services for conflicts within the Agency's workplace. (See Section III.A. of this report for more detail on the workplace ADR program). In addition, a set of pilot projects is being developed to test the use of ADR in meeting EPA's environmental justice and civil rights objectives. (See Section III. B. of this report). Other objectives for expanded use of ADR include facilitated consultations with stakeholders and third parties, early intervention in conflicts involving the regulated community, contractors, and others seeking to do business with EPA.

D. Expansion of Regional ADR Network

In addition to organizational developments in the ADR program at Headquarters, EPA is finding that an expansion of the Regional ADR staff is having a dramatic impact on the Agency's overall capacity to manage ADR programs and deliver ADR services. What started in 1990 as a network of Regional enforcement staff has become a working body of Regional ADR Specialists. Further, many Regions have expanded the number of staff with ADR responsibilities within and beyond the enforcement program. In Regions 1, 8, 9, and 10, there are designated individuals who have been authorized to devote 50-100% of their time to ADR-related activities. Two individuals work in Regional enforcement programs, and three others are providing facilitation services in support of other Agency activities. Additional staff in all ten Regions have ADR responsibilities on a collateral duty basis. Among the roles they serve are: consulting with case teams and outside parties about the appropriateness of ADR in particular circumstances; assisting in ADR process design; facilitating selection of acceptable mediators; and providing direct convening, mediation and facilitation services. Increasingly, this network of in-house ADR consultants collaborates across the Regions to broaden the influence of ADR successes and to assist each other in convening new cases. There appears to be a direct correlation between the availability of ADR-skilled staff to perform these functions and the level of ADR activity within a given Region.

E. Development/Issuance of an Agency-wide ADR Policy

Work has begun to develop a policy addressing the use of ADR at EPA, development of new ADR programs, enhancement of existing ADR programs, and ADR training for Agency staff and managers. This effort will satisfy the requirement of the ADRA that all federal agencies adopt a policy that "addresses the use of alternative means of dispute resolution and case management." The ADRA requires, as part of the process of drafting an ADR policy, that agencies examine the use of ADR in connection with: (1) formal and informal adjudications; (2) rulemakings; (3) enforcement actions; (4) issuance and revocation of licenses or permits; (5) contract administration; (6) litigation brought by or against the agency; and (7) "other agency actions." While EPA has existing policies that address components of these subject areas (e.g., enforcement, procurement), the Agency still has a need for a more comprehensive policy that will address the use of ADR across the Agency's programs and Regions.

EPA has initiated a two-step process to meet the Agency's policy needs: (1) issuance of a cross-program interim policy that highlights EPA's ADR experience and expresses a strong commitment to ADR; and (2) formation of a work group to draft and issue a final Agency-wide policy for appropriate use of ADR within the Agency. It is also anticipated that program-specific guidances will be developed that are consistent with the final Agency-wide policy.

It is anticipated that the interim policy will be completed and published in the Federal Register in the next few months. The more comprehensive policy, incorporating several component parts, is expected to be complete by the end of the year 2000.

F. New Neutral Services Contract

In February 1999, the Agency awarded a new neutral services contract to Marasco Newton Group, Ltd. The neutral services contract is a vehicle for Agency program offices and Regions to access neutral services for dispute resolution activities such as: convening, conflict or issues assessment, facilitation, mediation, and other services to assist EPA stakeholder involvement activities. Dispute resolution services under the contract may be helpful to Agency personnel engaged in: regulation and policy development, permit issuance, compliance and enforcement actions, EPA workplace and labor disputes, contracts and grants disputes, and voluntary programs such as Project XL and Community-Based Environmental Protection (CBEP). The current projects on the contract are evidence of the broad range of available neutral services. Ongoing projects include use of ADR professionals for policy dialogues, enforcement cases, training design and delivery, and facilitation of public meetings. In an innovative approach, the contract includes “just-in-time” delivery orders which make neutral services for a particular category of disputes available on an expedited basis. Many of the specific ADR activities highlighted throughout this report involved the use of neutrals accessed through the Agency’s neutral services contract vehicle.

The Marasco-Newton contract is a five-year task order contract with a total ceiling of \$ 41,000,000. Although the Marasco Newton contract has been in effect for less than one year, 44 projects with a value of \$4.4 million have already been initiated. A previous neutral services contract averaged approximately 40 new projects each year at a value of \$3-4 million. Projects under the neutral services contract have been funded on an ad hoc basis from program technical support budgets across the Agency. Dependency on program dollars for neutral services ensures that EPA’s program offices are vested in a particular project, although this type of funding mechanism also gives rise to “orphan” projects, *i.e.*, potential projects with merit but no readily available source of funding. The various ADR programs at the Agency continue to look for creative ways to overcome this funding gap.

IV. Accomplishments in New Uses for Alternative Dispute Resolution Techniques at EPA

In kicking off the IADRWG in September 1998, the Attorney General urged all federal agencies to put in place at least one new ADR program within a year. EPA has risen to this challenge and within the last year, has introduced ADR techniques in several new areas of Agency practice and administration. The following subsections highlight new ADR initiatives.

A. Headquarters Workplace Dispute Mediation Program

In January 2000, EPA will begin offering mediation as one way to resolve workplace grievances and discrimination complaints at Headquarters. Mediation is a confidential, informal process for bringing disputing parties together with a neutral third party to see if they can work out their own mutually acceptable solution to a problem. The experience of other federal agencies with workplace mediation programs demonstrates that 60% to 70% of discrimination complaints and workplace grievances that are mediated are resolved. This not only saves valuable human and financial resources, but also leads to better employee working relationships and morale. Employees give up no rights by trying mediation. If an acceptable agreement is not reached, the employee still is able to file a formal complaint or grievance. Employees are able to have union, legal, or other representation of their choice during mediation.

The mediation program was designed in 1999 by a team composed of employees and union representatives from Headquarters. This team used the workplace mediation program experience of six federal agencies as a benchmark, and incorporated those agencies' successes in program organization and implementation into the proposed EPA mediation program. EPA expects staff and managers to use the program with confidence.

The first year of implementation will be a pilot period, during which mediation will be offered only for issues that are the subject of discrimination complaints or subject to either the Agency's negotiated grievance or administrative grievance procedures. Expansion of the program to cover additional kinds of disputes will depend on what is learned during the pilot phase. Initially, the mediators will come from the Federal Shared Neutrals Program, which provides, at no direct cost to EPA, federal mediators from other agencies. The team also recommended that EPA develop its own internal corps of collateral duty mediators. This recommendation is based on the finding of other agencies that employees trained in conflict resolution naturally transfer their skills to their regular job situations, thereby producing an incidental positive benefit for the workplace.

During the first year, ADR staff is expected to: (1) conduct considerable promotion outreach to Headquarters staff; (2) train a corps of EPA mediators, union representatives and conflict resolution coordinators; and (3) oversee 30 to 40 mediations. While the pilot program focuses on disputes at Headquarters, all EPA Regions are preparing to offer mediation for discrimination complaints beginning in January 2000, in accordance with recently revised Equal Employment Opportunity Commission regulations. Headquarters staff will work with the Office of Civil Rights to support the Regions' mediation efforts and to share lessons from Headquarters experiences.

B. Use of ADR Techniques to Support EPA's Environmental Justice and Title VI Programs

The Senior Counsel for Alternative Dispute Resolution, the Office of Civil Rights (OCR), and the Office of Environmental Justice (OEJ) have been working together to explore ways to use ADR techniques in addressing environmental justice and matters arising under Title VI of the Civil Rights Act of 1964. The goal of this collaboration is to design and test the effectiveness of ADR techniques in responding to and resolving conflicts that arise between the Agency and outside stakeholders or amongst outside stakeholders (e.g., state authorities and communities) on matters relating to environmental justice.

OCR receives formal administrative complaints alleging discrimination by a recipient of EPA's financial assistance. A regulatory program administered by OCR governs the processing of such complaints. OEJ frequently receives informal complaints or allegations of environmental injustice relating to EPA's direct programs and activities. OEJ does not currently offer a process for addressing informal environmental justice complaints. Despite differences in the procedural approaches at OCR and OEJ, there are similarities in the disputes that underlie the complaints received by these two offices. Thus, recent work has focused on designing pilot programs that can be used to test the use of ADR in these types of disputes generally. An example of a recent accomplishment in the Title VI area is described below.

1. Resolution of Title VI Complaints: Pilot Program

Title VI of the Civil Rights Act of 1964, as amended, prohibits discrimination based on race, color, or national origin under the programs or activities of recipients of federal financial assistance. Individuals or organizations who believe that an EPA financial assistance recipient has acted in a discriminatory fashion may file a Title VI complaint with EPA. If the complaint meets the criteria for accepting a complaint for investigation provided in EPA's Title VI implementing regulations, EPA's Office of Civil Rights (OCR) must conduct an investigation and make a determination of whether the recipient is in compliance with EPA's Title VI regulations. This can take months or years to complete.

Consequently, the Agency is now faced with a growing backlog of Title VI administrative complaints. Currently, OCR has over 40 complaints either accepted for investigation or pending an acceptance decision. EPA's regulations state that OCR shall attempt to resolve Title VI complaints informally whenever possible, and for at least some of these cases, ADR may be appropriate. EPA wants to encourage informal, non-adversarial approaches to dealing with Title VI problems wherever possible.

Two examples from this past year illustrate the application of ADR techniques to pending Title VI complaints. In one case, a community organization in Connecticut charged the Connecticut Department of Environmental Protection with improperly siting and permitting a landfill. EPA Region 1 provided a mediator who assisted the community organization, the State, and the developer of an urban renewal project to reach an agreement that the negotiating parties felt was a fair way to proceed. In the second

case, EPA Region 9 hired a neutral third party to do an initial objective assessment of a complaint made by a community association in California against the California Department of Toxic Substance Control. The third party was also asked to determine the willingness of the parties to participate in an initial meeting to discuss the possibility of using a mediated process for resolving the controversy. The neutral's report provided the Region and the involved parties with a better understanding of the situation and each others' concerns and interests. Even though there was no agreement to attempt to resolve the complaint through mediation or any other facilitated problem-solving process, the Region found the effort worthwhile.

OCR is actively working with the Regions to identify additional opportunities to use ADR for Title VI complaint resolution. The Office has established and funded a task order under the Agency's Neutral Services Contract that will provide resources to support the use of ADR in approximately three more Title VI complaints over the coming year.

C. Use of ADR Techniques in Permitting Programs

One of the areas that EPA has targeted as a potential new forum for application of ADR techniques is permitting. The ADRA specifically requires that an agency examine alternative means of resolving disputes in connection with issuing and revoking permits. In addition, EPA is committed to continued development and use of meaningful public participation processes during environmental permitting. The use of collaborative processes to enhance public participation opportunities during permitting activities may assist the Agency in meeting some of its objectives for the next generation of environmental permitting. Work in this area to date has focused on the role of public participation, and in particular, examining ways to improve participation by communities during the permit process. An example of this work in the context of a rulemaking that will trigger air permitting activities is highlighted below.

1. Tier 2 Permitting Implementation Project

The Office of Air and Radiation (OAR) and ADR staff are cooperating on a project that employs an ADR technique in preparing for future permitting activities associated with the Tier 2 Motor Vehicle Emission Standards and Gasoline Sulfur Control Requirements rule (Tier 2). Tier 2 is a major regulatory program designed to reduce significantly emissions from cars and trucks nationwide. One component of this regulatory program is new standards for the sulfur content of gasoline. Many refineries will need to make operational changes or capital investments in new technology in order to meet the new gasoline sulfur standards. Consequently, such changes may trigger permitting obligations for the refineries under the Clean Air Act.

EPA engaged dispute resolution professionals to conduct a convening in an effort to engage a broad spectrum of stakeholders as the Agency considers what policies will govern refinery permitting under Tier 2. The dispute resolution professionals have been tasked to conduct interviews with

stakeholders to explore with them their perceptions and views of issues associated with Tier 2 permitting. During Phase I of the project, completed in September 1999, the contractors contacted representatives from selected EPA offices, states, industry, environmental groups, and environmental justice organizations. Phase II of the project will consist of more focused interviews to assess the potential for a collaborative process among stakeholders and to identify what services community groups in particular need to effectively participate in a potential future permit process.

The goal of this project is to assist EPA in understanding and ultimately meeting the challenges of implementing the portion of the Tier 2 rule that applies to refineries. EPA is anticipating the potential for a concentrated period of permitting activities at refineries nationwide and wants to ensure that these activities will be a success, such that the health and environmental benefits associated with low-sulfur gasoline can be realized in a timely fashion. The Agency hopes that stakeholder involvement in the development of Tier 2 permitting policy and planning for future permitting activities will yield better results for the refineries, the permitting authorities and surrounding communities.

D. ADR Use in Brownfields Pilots

A program of the Office of Site Remediation Enforcement (OSRE) within the Office of Enforcement and Compliance Assurance (OECA) has employed an ADR technique called facilitation at several Brownfields sites as part of a pilot project over the past year. Brownfields are abandoned, idled, or under-used industrial or commercial properties where expansion or redevelopment is complicated by real or perceived environmental contamination. The purpose of the facilitation pilot is to increase and enhance community involvement in the decision making process for Brownfield site assessment projects.

Facilitation is a voluntary, informal, and flexible process of communication guided by a professional neutral. Facilitators can identify stakeholders and issues, clarify roles and responsibilities, draft procedural guidelines and agendas, and document decisions. The Agency has found that using neutrals in a facilitation role has provided a better understanding of stakeholder needs and concerns and opened up a forum for proposing solutions.

The Brownfields facilitation pilot consists of projects at ten specific Brownfields sites representing a diverse range of redevelopment projects and communities across the country. A dispute resolution professional has been engaged to work with the parties and public at each site as a facilitator. For most projects, the facilitation work is limited to 120 hours. Each project has approached the facilitation process in a unique way so as to best address the dynamics of the particular site. While each of the projects are at a different stage, EPA is already finding that lessons from these pilots may be applicable to the Agency's approach to community involvement in the Brownfields program generally. Some examples of the Brownfields facilitation pilots are described below.

At the initiation of a Regional project manager, key stakeholders engaged in a series of facilitated collaborative problem solving meetings in order to discuss alternative clean-up strategies and potential

future land uses at a Brownfields site in Region 8. The Region employed a team of facilitators to identify the stakeholders and facilitate the meetings. Although each party to the process came in with their own interests, they agreed to explore ways to address the interests of other parties. A key role of the facilitators was to keep the parties talking and focused on the potential gains of a collaborative solution. In the end, a new vision for redevelopment of the site emerged, along with agreements for implementation of that vision. Each party's contribution to the final solution was critical to the overall success of the remediation and redevelopment plan.

A Brownfields facilitation pilot project in Region 3 is taking place in a rural setting. The facilitators have helped a community steering committee undertake a visioning process for the future of a Brownfields site. This visioning culminated in a proposal developed by the committee that offers a great deal of promise for the future of the community. The facilitated planning work also paid significant dividends in terms of overall public participation. The first public meeting regarding this site not only generated a great deal of local interest but also served as an opportunity for cooperation among local, state, and federal government entities.

Another facilitation pilot was initiated in Region 9 when the Brownfields project manager approached Regional and Headquarters ADR staff seeking assistance in the handling of a difficult situation at a Brownfields project site. One landowner appeared to be creating an intractable obstacle to remediation and redevelopment efforts. The services of a professional facilitator helped clarify options and reestablished communications between participants at this site. Ultimately, the difficulties presented by the landowner were overcome and a redevelopment plan was generated in which the jurisdiction of the Brownfields project was shifted and doubled in area. After EPA's funding hours for the facilitator were consumed, the parties independently agreed to cover the costs of continued facilitation services -- a true measure of success for this facilitation pilot.

V. Accomplishments in Existing ADR Programs

A. Recent Highlights of Existing ADR Programs at EPA

EPA has a rich history of using ADR techniques for conflict resolution among Headquarters offices and in all ten Regions. This section of the report contains highlights of EPA's mature ADR programs, presented in five categories. While each program is different in terms of its operations and purpose, all have embraced the value and utility of neutral services to advance EPA's environmental objectives. First, over fifteen years ago, EPA began experimenting with regulatory negotiation and other consensus-building techniques for developing better regulations that can be implemented in a less adversarial setting. That work provided a foundation for several other Agency programs devoted to stakeholder involvement. Second, an enforcement ADR program has been in existence for more than ten years to promote and facilitate the consideration and appropriate use of ADR techniques in all Agency enforcement actions. Third, each of the Regions has supported a variety of ADR activities, including applications in enforcement, workplace disputes, and public involvement. Fourth, EPA's Administrative

Law Judges (ALJs) recently initiated a program to offer in-house ADR to parties in cases pending an administrative hearing. Fifth, contracts and procurement officials have incorporated ADR usage into a standard policy in EPA's acquisition management program.

The successes of these programs over time have contributed to EPA's status as a leader in the use of ADR in the federal sector. The existing programs have also established a foundation for new uses of ADR to achieve the Agency's programmatic and administrative goals. Many Agency personnel have had exposure to ADR through one or more of these programs. The resulting wealth of expertise makes the Agency particularly well-positioned to address new challenges.

The following program summaries and highlights focus on ADR practices at the Agency that have been in existence for longer than one year.

1. Stakeholder Involvement Activities

EPA has taken steps over several years to increase the opportunities for and quality of stakeholder involvement. Three existing programs are worthy of particular note for incorporating ADR techniques as tools to enhance stakeholder involvement. The Office of Cooperative Environmental Management within the Office of the Administrator works with stakeholders through federal advisory committees. The Consensus and Dispute Resolution Program within the Office of Policy and Reinvention has used neutral facilitators in regulatory negotiation and policy dialogue activities. The Community Involvement Program within the Office of Solid Waste and Emergency Response manages a program that uses ADR professionals to assist public participation in EPA decisions regarding remedial activities at Superfund sites. Each of these stakeholder involvement programs is described below.

a. Office of Cooperative Environmental Management

The mission of the Office of Cooperative Environmental Management (OCEM) is to provide EPA with expert and timely stakeholder advice as national and international environmental policy is developed and implemented. OCEM utilizes ADR techniques such as convening and facilitation in fulfillment of its mission. One of OCEM's principal functions is the oversight of federal advisory committees under the Federal Advisory Committee Act (FACA). Through advisory committee work and other efforts, OCEM supports EPA's efforts to create links among decision makers from diverse disciplines and to make use of technical and policy experts in addressing key environmental issues.

b. Consensus and Dispute Resolution Program

The Consensus and Dispute Resolution Program provided leadership in the stakeholder involvement arena by introducing the use of negotiation and other consensus-building techniques in the rulemaking context. Since 1983, the Consensus and Dispute Resolution Program has run seventeen regulatory negotiations and several policy dialogues between the Agency and stakeholders. In addition, the Consensus and Dispute Resolution Program provides consultation services to program offices on the design and implementation of policy dialogues, consensus-building meetings, and other intensive stakeholder involvement processes. Neutral facilitators have been employed in several of these projects. As a result of the efforts of the Consensus and Dispute Resolution Program, informal and formal stakeholder involvement in the Agency's rulemaking activities is virtually standard practice throughout the Agency. Active stakeholder engagement in the development of Agency rules and policy has yielded tangible results such as fewer and more moderate public comments and speedier implementation of regulatory requirements.

The convening of the Endocrine Disruptor Screening and Testing Advisory Committee (EDSTAC) is one recent example of where neutrals were used to enhance stakeholder involvement in a policy dialogue on an issue of importance to EPA. Dispute resolution professionals were hired to conduct a convening assessment to identify major stakeholder interests and to assist all of the major stakeholder interests in sorting through a number of issues regarding the formation of the proposed EDSTAC. The dispute resolution professionals engaged in an extensive consultation with representatives of affected interests through telephone and in-person interviews, numerous conference calls, and facilitated discussions with approximately 100 people. Ultimately, the professionals made recommendations regarding the make-up of the EDSTAC and initial goals for the committee. The result of the convening effort was a broad-based membership for EDSTAC, consisting of EPA, other federal agencies, state agencies, various sectors of industry, water providers, worker protection organizations, national environmental groups, environmental justice groups, public health groups, and research scientists. The diverse interests represented on the EDSTAC were part of an effort to ensure that all major stakeholder groups had their views and interests balanced against the views and interests of others as the committee adopted a consensus approach to policy development.

c. Community Involvement Program

The Community Involvement Program within the Office of Solid Waste and Emergency Response (OSWER) manages the use of dispute resolution professionals to assist the participation of the affected public in Agency decisions relating to Superfund remedial activities. A variety of initiatives are currently supported by the Community Involvement Program, including the availability of facilitation or mediation services on a "just-in-time" basis to address specific site problems or general concerns about the Superfund program. In addition, the Program has sponsored training courses in each Region to enhance the ability of EPA staff to build partnerships and collaborate constructively with people who live and work near Superfund sites. Finally, a network of ombudsmen, including the National Hazardous

Waste Ombudsman and ten Regional Superfund Ombudsmen (who serve on a collateral duty basis), has been established to provide timely assistance to people who are not satisfied with a particular action or activity under the Superfund program. The ombudsmen do not have authority to change decisions, but they will work with the parties to see if a mutually acceptable resolution can be reached.

2. Enforcement

EPA's Office of Enforcement and Compliance Assurance (OECA) manages an enforcement ADR program that supports and encourages the use of ADR in Agency civil enforcement and compliance activities. Since 1987, EPA has had a policy on the use of ADR techniques in enforcement actions. The staff of the OECA ADR program has worked to make the consideration of ADR standard practice in enforcement cases. The OECA ADR program includes staff at both Headquarters and in the Regions who provide dispute resolution services, training, assistance in evaluating civil actions for appropriate ADR use, assistance in selecting ADR professionals, preparation of procurement documents, and reporting on OECA ADR activities.

The OECA ADR program uses ADR techniques to enhance the settlement of civil actions under a broad range of authorities, including the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), Resource Conservation and Recovery Act (RCRA), Toxic Substances Control Act (TSCA), the Clean Water Act (CWA) and the Clean Air Act (CAA). Civil actions are assisted primarily through the use of convening and mediation neutrals, although other ADR processes including factfinding and arbitration have also been used. EPA utilizes ADR professionals to support efforts of private parties to resolve Superfund site allocation disputes and to facilitate public participation in site remedy and policy decisions. In addition, EPA includes ADR processes in the dispute resolution provisions of administrative and judicial settlement documents.

Over the last few years, the OECA ADR program has witnessed a significant increase in the number of ADR activities initiated. In the early years the program initiated a handful of new ADR cases each year, but in fiscal year 1997, approximately 30 new cases began. In fiscal year 1998, approximately 40 cases were initiated. Historically, most enforcement ADR activity was in the Superfund context, and this area continues to be a focus of the OECA ADR program. More recently, however, the OECA ADR program has seen creative uses of ADR techniques in settling non-Superfund disputes. The potential for ADR use outside of the Superfund program is tremendous and will be a growth area for the OECA ADR program in the near future. For example, half of the enforcement ADR cases initiated in fiscal year 1998 were non-Superfund cases, up from about 20% non-Superfund in fiscal year 1997.

One success story of note from the OECA ADR program involved a mediated settlement of a multimedia civil penalty case brought against a large pharmaceutical manufacturing facility located in Region 1. The case involved alleged regulatory violations of RCRA, the Clean Water Act, and the Emergency Planning & Community Right-to-Know Act. The parties to the case were facing potentially

lengthy litigation when they agreed to consider ADR. The parties ultimately engaged in a blended ADR process, including a neutral evaluation phase and a mediation phase. The parties reached a settlement, which was ultimately formalized in a consent decree, under which the respondent company agreed to pay a substantial penalty in addition to undertaking two projects to address chemical waste management at a university and in high schools. By resolving their dispute in mediation, both sides saved time and money that would otherwise have been devoted to litigation. In addition, the positive experience of working together to resolve this dispute is likely to improve the relations of the parties in the future. Finally, the mediated approach made it easier to deliver a benefit to the broader community than would have been possible through a litigated resolution.

Another OECA ADR program success story yielded a settlement of alleged RCRA violations in a case that appeared to be headed for litigation. A Region 6 manufacturing facility and EPA became engaged in an intense disagreement regarding whether a particular treatment and disposal process constituted a violation of hazardous waste regulations. Further, the parties were very far apart during preliminary discussions regarding a potential penalty amount. The company proposed that the parties enter into mediation to attempt to resolve the outstanding issues. After a one day mediation with an outside professional mediator, it appeared that there would be no settlement of the case. A day or two later, however, the company called the mediator with a settlement offer and asked for his assistance in brokering an agreement. Ultimately, the parties agreed on a penalty amount, a payment schedule, environmental monitoring, and a change in the company's treatment and disposal practices.

3. Regional Activities

The Regions are responsible for many innovations in the use of ADR at EPA and demonstrate that ADR has a broad spectrum of applications. The Regional ADR programs vary widely in form, however, a few themes emerge as nationally consistent trends. First, ADR use in the Regions is more established in Superfund than in any other program. Second, ADR awareness is on the rise as the Regions, with Headquarters support, are finding new and more targeted ways to educate regional staff about this set of tools. Third, the Regions are developing useful new models by mixing and matching ADR techniques to meet the needs of particular circumstances. Each of these points is discussed briefly below.

a. Prevalent Use of ADR in Superfund

The process of integrating the use of ADR into regional practice began in the Superfund program in the early 90's. With funding and contracting assistance from Headquarters, this evolution has now progressed to the point where the consideration of ADR is virtually standard operating procedure in some Regions. In addition to mediated enforcement negotiations, the Regions are employing neutral facilitators, neutral allocators, ombuds, and partnering consultants to more effectively involve communities and other stakeholders in remedy decisions.

The Regions have realized many successes through the use of ADR in the Superfund context. In one case from Region 1, community dissatisfaction with the traditional Superfund process prompted EPA to use ADR techniques to create new mechanisms to involve the community and other voices. These efforts yielded solutions acceptable to all parties. For more than 70 years, a manufactured gas plant dumped large amounts of waste into adjacent wetlands and a canal, seriously contaminating groundwater and posing an unacceptable risk to wildlife. EPA's original cleanup plan for the site was met with strenuous community opposition for being too expensive and intrusive. After months of controversy, a site Coordinating Council was created as a way to begin a mediated process that would ensure meaningful involvement of all parties, including companies potentially responsible for the cleanup, state and federal regulatory agencies, and local interests. Outside dispute resolution professionals were hired to facilitate Council activities. Ultimately, the Council reached consensus on a recommendation for an alternative site cleanup plan that met local and regulatory needs -- all at a cost of about one-tenth the original proposal. EPA's final remedy decision adopted the Council's recommendation.

b. Regional ADR Training: The Targeted Approach

The Regions are collaborating with Headquarters, Regional training staff, Federal Executive Board Neutral Sharing Programs, and professional organizations such as local bar associations and the Society of Professionals in Dispute Resolution, to provide Regional staff with multi-faceted ADR training opportunities. Regional staff have been working with outside professionals to develop training programs with relevance to particular EPA audiences. Examples of recent training initiatives from some Regions include:

- C ADR case presentations/discussions to promote awareness of new applications of ADR in specific contexts (tribal issues, community controversy, access disputes, regulatory penalty mediation, etc.)
- C training (provided by Regional trainers) on the use of interest-based problem solving as a technique for organizational success and a method for improving collaborative decision making;
- C intensive mediation and facilitation programs for those who are more directly involved in regional ADR activities; and
- C the inclusion of mediation and collaborative decision-making components in broader trainings such as the negotiation training offered to Regional wetlands staff which significantly incorporated ADR principles and role plays.

c. Development of New ADR Models

The Regions have found that one of the most attractive features of ADR in the environmental context is its adaptability to the infinitely varied requirements of particular circumstances and parties. In

designing appropriate processes on a case-by-case basis, certain templates are emerging which have relevance to whole categories of situations faced by the Regions.

An example is what might be called the “mediative facilitation,” that is, the use of a facilitator who is also a skilled mediator. This phenomenon has sprung up independently on both coasts in response to situations where parties are apprehensive about the idea of mediation, but anxious to have help managing their meetings. By providing a facilitator who is also an experienced mediator, the Regions have maximized the possibility that the group will receive the fullest benefit of ADR. Other hybrids involving a mix of facilitative and evaluative components have also been devised to advance settlement negotiations in unusual circumstances.

One successful application of mediative facilitation in Region 9 involved the negotiation of guidelines governing the development of operating permit conditions that satisfy the “periodic monitoring” requirements of Title V of the Clean Air Act. A Region 9 employee, serving as an in-house neutral, facilitated an agreement between EPA, the California Air Resources Board, and local air quality districts. The process began with a series of interviews to synthesize the interests, issues, and ideas from each participant. Following this initial step, the parties held a series of meetings during which the facilitator helped representatives of the various regulatory authorities come to a consensus-based agreement on the framework and criteria for a set of guidelines. During the meetings, the facilitator helped move the parties away from mere reiteration of their positions and towards an objective review of the problem and identification of common interests. The result was a jointly crafted set of recommendations that satisfied all of the participants and will provide a basis for avoiding future disputes on Title V permit conditions pertaining to periodic monitoring.

Another recent example of Regional creativity in addressing program needs through use of ADR techniques occurred in Region 3, where the contracts office worked with the Regional ADR specialist and a representative of the Water Protection Division to quickly assemble a team of mediator/facilitators for a Source Water Protection Program Roundtable conference. The roundtable brought together many stakeholders involved in the problem of protecting drinking water sources. Led by the professional neutrals, the stakeholders participated in a consultative process, the results of which ultimately fed into the development of policy and guidance on this subject.

The Regions have also found ways to incorporate ADR use as a means of addressing organizational challenges. For example, in designing a Labor Management Partnership Council (LMPC) for Region 9, union and management representatives agreed to use the interest-based process as one of the methods for addressing issues. They also agreed that the services of a neutral facilitator would be helpful. The facilitator, who is currently a Region 9 employee, has delivered training to the LMPC on the use of an interest-based process for conducting Council business and assists members in moving through a wide variety of issues that are before the LMPC. The interest-based model differs from traditional party-to-party negotiation in that it enhances the opportunities for the participants to develop creative

solutions that address all stakeholder interests and does not presume that interests must be compromised in order to resolve a problem.

4. ALJ Program

Beginning in fiscal year 1997, the Office of Administrative Law Judges (OALJ) developed an ADR program as an alternative method for concluding administrative enforcement cases pending before OALJ. In the initial year of the ADR program, the Judges applied ADR in about 50 test cases. This test proved so successful that OALJ sharply expanded its use of ADR in fiscal years 1998 and 1999. ADR techniques were used in over 150 cases in each of the last two years. Current policy is to offer the use of ADR in virtually all of the cases that come under the jurisdiction of OALJ.

The form of ADR that OALJ uses is mediation, generally facilitative, and sometimes evaluative. One of OALJ's ten Judges serves as the neutral. If the ADR process does not produce a settlement, the case is transferred to another Judge to preside over litigation which culminates in a decision from the Presiding Judge. There is no communication about the case between the neutral Judge and the Judge who presides over the litigation; the ADR proceedings are held in confidence by the neutral Judge.

OALJ offers ADR in cases under a variety of environmental statutes, including the Clean Air Act, the Clean Water Act, the Resource Conservation and Recovery Act, the Toxic Substances Control Act, the Federal Insecticide, Fungicide and Rodenticide Act, and the Emergency Planning and Community Right-to-Know Act. Most cases coming before OALJ are governed by EPA's Consolidated Rules of Practice in 40 C.F.R. Part 22. Section 18 of these regulations were recently amended to facilitate the use of ADR.

OALJ tested the use of ADR in fiscal year 1997 in the hope that it would speed OALJ's processing of cases. Administrative litigation is usually a lengthy procedure. Each of the normal steps leading to the Presiding Judge's decision – making motions, filing briefs, convening a hearing, examining and cross examining witnesses – takes time and effort. By contrast, a mediation process in which the parties are encouraged to exchange views informally and then try to develop a compromise resolution that answers some of the basic interests of both parties, is generally much faster and less resource intensive.

As the OALJ mediation program has gained maturity, a second benefit has appeared, i.e., the ability to implement creative resolutions, such as those involving environmentally beneficial projects undertaken by the respondent. In a case that is litigated, usually the only sanction that a Judge can impose is a civil penalty. Furthermore, that civil penalty goes into the federal treasury and is not earmarked for environmental purposes. Through mediation, however, the parties might agree to a reduced civil penalty if the respondent implements a project that benefits the environment and is beyond what is required by environmental law. Such projects are known officially as Supplemental Environmental Projects (SEPs). Typically, a respondent spends significantly more money on a SEP than

the reduction it receives in the civil penalty. Thus, the mediation process opens up opportunities to craft resolutions with tangible environmental benefits.

The ready availability of ADR through the efforts and procedures of OALJ enhances the visibility of ADR both within EPA and the regulated community. In addition, OALJ's ADR program contributes to the efficiency of EPA's administrative enforcement practice and provides an incentive for seeking enhanced environmental benefit in administrative enforcement cases.

A recent case from the OALJ program illustrates several recurrent themes. This case involved a governmental Respondent. EPA and local inspections of Respondent's facilities led to EPA's issuance of several complaints alleging numerous violations of the Resource Conservation and Recovery Act, demanding civil penalties approaching a million dollars, and the implementation of extensive corrective measures.

Judge Stephen McGuire served as the neutral and worked entirely through teleconferences. When the ADR began, the positions of the parties seemed unbridgeably far apart, with little common ground. Judge McGuire started by focusing the parties' attention on possible points of agreement that could be extracted from this limited common ground. To keep the discussions moving, Judge McGuire scheduled weekly teleconferences and regularly assigned the parties preparatory work to be done for the next week's teleconference.

Agreement on minor points arising out of the parties' limited common ground was eventually achieved. This achievement created a sense of joint purpose between the parties. According to the later testimony of the parties themselves, imbued by this sense of joint purpose they each stopped focusing on advocating their own position, and started to concentrate on understanding the goals of the other side and addressing its concerns. Here the parties were aided by periodic evaluations by the Judge McGuire of the merits of their respective positions.

After almost half a year of teleconferencing, the parties agreed to settlements concluding all the enforcement cases. The civil penalties that were agreed to totaled less than a hundred thousand dollars, but Respondent agreed to implement corrective measures that would improve significantly its hazardous waste handling and storage practices. Respondent came to view adoption of these corrective measures as representing very much its own self interest. Thus the ADR process both saved the parties the time and expense of a litigated hearing, and also produced an end result that each side saw as answering its basic concerns.

5. Contracts and Procurement

EPA's efforts to pursue the use of alternative dispute resolution techniques in the contracts and procurement operations of the Agency are led by the Office of Acquisition Management (OAM), in coordination with the Office of General Counsel. OAM has issued a formal written policy governing the

use of ADR techniques in connection with Agency-level protests, protests filed with the General Accounting Office, and disputes filed in accordance with the Contract Disputes Act. OAM has further pledged to advance the use of ADR techniques in all areas of EPA's contracting nationwide. During 1999, OAM staff, along with attorneys from the Office of General Counsel developed an alternative dispute resolution awareness training course to be incorporated into the contracting officer course curriculum. OAM has an objective to begin delivery of the course to all Agency contracting officers during fiscal year 2000.

VI. Partnerships with Other Federal Agencies

A. Interagency Agreements with the U.S. Institute for Environmental Conflict Resolution

The U.S. Institute for Environmental Conflict Resolution (Institute) is a newly-created federal agency that operates under the Morris K. Udall Foundation located in Tucson, Arizona. The Institute's role is to assist in the resolution of environmental conflicts that involve a Federal agency or interest. The Institute has specialized expertise with ADR techniques used in the environmental arena and maintains a network of programs and dispute resolution practitioners nationwide that can be employed for conflict resolution projects. EPA supports the Institute's role and plans to work closely with the Institute as a federal sector partner. Currently, the Agency is engaged in three initiatives with the Institute through interagency agreements. These initiatives are described in the sections that follow.

1. Development of the Environmental ADR Neutrals Roster

Over the past few years, EPA has been exploring mechanisms to broaden access to ADR practitioners for environmental disputes. The Agency is especially interested in increasing its capacity to utilize well-qualified practitioners in localized disputes. Through an interagency agreement, the Agency has engaged the Institute to help develop a roster of Environmental Dispute Resolution and Consensus Building Professionals. The roster will include practitioners with experience as neutrals on environmental issues. It will serve as a resource for the Institute in making referrals and sub-contracting with practitioners on federal projects and as a resource for federal agencies when seeking to contract with a practitioner.

The Institute developed criteria for inclusion on the roster and designed the function of the roster database with input from a workgroup including EPA personnel. The Institute will administer the roster, including the review of applications from professionals who desire to be included in the roster. The initial application period for inclusion on the roster ran through the fall of 1999. EPA should be able to gain access to the roster early in calendar year 2000.

2. EJ/Title VI Stakeholders Training Initiative

Controversies involving environmental justice (EJ) and discrimination complaints under Title VI of the Civil Rights Act of 1964 (Title VI) can arise at any stage of a Federal action. Experience has shown that the use of collaborative problem solving as early as possible is effective in resolving other kinds of disputes. ADR is an important, but as yet largely unexplored, tool for bringing about constructive resolution of EJ and Title VI matters. As discussed above in Section III.B. of this report, application of ADR in Title VI and EJ contexts is a priority for the Agency's ADR program and initial efforts are underway to address this need. In order to build capacity for ADR use in these disputes, the Senior Counsel for ADR in cooperation with EPA's Office of Environmental Justice, Office of Civil Rights, and representatives from selected EPA Regions will work with the Institute to develop a training module to introduce a broad spectrum of stakeholders to ADR techniques and their potential use in the EJ/Title VI context.

This project has been funded through an interagency agreement with the Institute, and will include delivery of a culturally sensitive training course for a diverse group of stakeholders. After delivery of the training, the Institute and EPA will jointly review the findings, the lessons learned and will evaluate the training to measure the increased awareness of the participants of the application of ADR techniques to EJ and Title VI disputes. The Institute and EPA will jointly develop and contribute to a presentation of this information to EPA staff with responsibility for EJ and Title VI issues.

3. ADR Specialists Consulting and Convening Training

EPA's regulatory responsibilities require that staff level enforcement personnel negotiate with regulated industry in an effort to resolve civil enforcement actions where appropriate to avoid the delay and expense of litigation. A negotiation resource of increasing importance to EPA enforcement and compliance negotiations is the use of ADR techniques. While EPA often makes use of third-party neutrals to serve as mediators and/or facilitators, complex negotiations involving large numbers of parties, highly technical issues, and/or intergovernmental disputes require in-house expertise to help initiate and sustain an ADR process. EPA's Enforcement ADR Specialists provide consultation to EPA negotiators regarding the nature of an ADR process. In addition, the Specialists may need to engage external parties. The Institute is developing an advanced training program for EPA Enforcement ADR Specialists that will focus on consulting and convening skills that can be applied both within EPA and with external parties.

B. EPA Mentoring Activities

Through the activities of the Interagency Alternative Dispute Resolution Working Group (IADRWG), EPA has had several opportunities to serve as a mentor to and receive mentoring from other federal agencies. The Civil Enforcement Section of the IADRWG established consultation teams that served as consultants to federal agencies working on establishing and developing civil enforcement ADR programs. The multi-agency teams were led by EPA and provided services to several individual agencies. EPA was also the recipient of advice regarding the development of ADR programs in areas

other than civil enforcement. Specifically, EPA has benefitted from the expertise of other agencies with mature workplace ADR programs. The mentoring relationships that EPA has been involved in have strengthened EPA's relationships with other ADR practitioners in the federal sector, and have enriched the Agency's own ADR work.

C. EPA Participation in Federal Shared Neutrals Program

The Federal Shared Neutrals program is a service through which federal agencies can obtain low cost, high quality mediators from other participating agencies. The mediators in the program provide mediation services throughout the federal government on a collateral duty basis. EPA participates in this program by both supplying EPA employees who serve as mediators and by using the services of mediators from other agencies to resolve disputes at EPA. The Federal Shared Neutrals Program exists not just in Washington, D.C., but in localities across the country where there is a federal presence. Region 10 participates in a federal shared neutrals program in the Seattle area that was honored earlier this year by the Office of Personnel Management.

VII. Conclusion

EPA's ADR program has achieved significant successes both recently and over the course of its history. The call to action by the President and the Attorney General in 1998 provided a special impetus for organizational and programmatic improvements in the Agency's approach to ADR. During the last year and one half in particular, several new or expanded ADR programs have been launched. These programs will bring ADR techniques to some of EPA's priority areas, such as resolution of workplace complaints and grievances, problem-solving in the areas of Title VI and environmental justice, and new methods of ensuring meaningful public participation in permitting and site redevelopment processes. Meanwhile, EPA's more established ADR programs continue to demonstrate success through the use of collaborative processes in a variety of contexts. Finally, EPA has begun to take advantage of partnerships with other federal agencies as an efficient means of expanding capacity for ADR applications throughout the federal sector. All of these activities are a credit to the Agency's willingness to use innovative tools such as ADR to achieve the Agency's broader programmatic and organizational objectives. The lessons learned thus far in EPA's ADR experience provide a foundation for a more complete assessment of how use of third party neutrals may improve Agency decision making and prevent and resolve conflict.

REPORT TO THE PRESIDENT ON AGENCY ADR ACTIVITIES

Agency Name: Federal Bureau of Investigation
Office Of Equal Employment Opportunity Affairs (OEEOA)

Points of Contact:

<u>ADR Manager</u>	<u>ADR Specialist</u>
SSA Jorune M. Jonikas	Beth Griffin
Complaints Processing Unit	Special Programs Unit
Office of Equal Employment	Office of Equal Employment
Opportunity Affairs	Opportunity Affairs
202-324-4128	Training Office-Quantico
202-324-1135	703-632-3177
(No e-mail)	(No e-mail)

Does your agency have an ADR policy statement?

Yes. Final draft of the policy statement is under review by the Office of the General Counsel (OGC) and the Director's Office.

What is your agency's ADR budget?

There is no separate budget, nor is a portion of the overall budget specifically targeted for ADR. ADR would be funded through OEEOA's operating budget.

How many Full Time Employees does your agency dedicate to ADR?

There are no full time employees solely dedicated to ADR. ADR activities would be staffed by employees who would undertake ADR as an additional duty (as in the case of the ADR manager and ADR specialist) or as a collateral duty (as in the case of mediators and co-mediators).

What programs has your agency established during FY 1999 pursuant to the Administrative Dispute Resolution Act and the President's directive to promote greater use of ADR?

Approval was granted in FY 1999 to develop a pilot ADR program and implement it in several field offices and headquarters divisions. The ADR pilot program has been drafted, the field offices selected and the details finalized. The program is currently under review by OGC and awaiting final approval by the Director. The pilot program should be in place before the end of January, 2000.

What ADR programs has your agency expanded or improved during FY 1999?

The FBI's OEEOA, has worked with the FBI's Office of Personnel Dispute Resolution (OPDR) to expand its scope to allow for earlier intervention in EEO related cases in order to improve the prospects of earlier resolution to such cases. Please see the survey submission for OPDR's ADR program.

What benefits has your agency received from these programs?

There have been several settlements/resolutions through OPDR early enough in the process to forestall the filing of a formal complaint since OPDR has expanded its scope.

What ADR success stories does your agency have to share with the President?

The success stories to date are, by themselves, small achievements. Taken together, however, they demonstrate that FBI employees and managers are more willing to sit down and discuss problems, whether they are workplace difficulties, personality differences, or EEO matters.

What are your agency's ADR goals, including resources necessary for the future?

The ADR goals of the FBI are to:

- Resolve disputes at the earliest possible stage.
- Expedite complaint processing.
- Reduce the cost of processing EEO complaints.
- Encourage problem-solving by the parties.
- Enhance overall morale and cooperation.
- Encourage open communications and promote tolerance.
- Maintain confidentiality.
- Expand the use of ADR to all types of workplace disputes.

The future resources that may be required once the pilot program is assessed are, at present, speculative at best. However, once some form of ADR is expanded Bureau-wide, a full time ADR manager and specialist would be required to oversee the program within OEEOA. In addition there would be a need for additional funding to cover the mediator/co-mediator training and travel. Depending on the volume of cases to be mediated, there might ultimately be a need for additional funding and personnel in OGC.

REPORT TO THE PRESIDENT ON AGENCY ADR ACTIVITIES

Agency Name: Federal Bureau of Investigation
Office of Personnel Dispute Resolution (OPDR)

Points of Contact:

<u>ADR Manager</u>	<u>ADR Specialist</u>
Kenneth R. Gross	Colleen Baldwin
Unit Chief	Management Analyst
Office of Personnel	Office of Personnel
Dispute Resolution	Dispute Resolution
Administrative Services Div.	Administrative Services Div.
FBI Headquarters	FBI Headquarters
202-324-9379	202 -324-1632
opdr.personnel@fbi.gov	same

Does your agency have an ADR policy statement?

Yes. See attached.

What is your agency's ADR budget?

The activities of the two person OPDR staff are funded from the Administrative Services Division (ASD) Front Office budget. The activities of the various Senior Executive Service (SES) managers at FBI Headquarters (FBIHQ), who are assigned cases for negotiation/mediation, are funded by their respective FBI divisions.

How many Full Time Employees does your agency dedicate to ADR?

Two FTEs in ASD are dedicated to OPDR's ADR mission. In addition, a group of trained FBI SES level managers undertake negotiation/mediation on a collateral duty basis as the OPDR assigns cases to them.

What programs has your agency established during FY 1999 pursuant to the Administrative Dispute Resolution Act and the President's directive to promote greater use of ADR?

The OPDR continues to function in the ADR role which it was given upon its creation in 1991.

What ADR programs has your agency expanded or improved during FY 1999?

The OPDR has begun its ADR intervention earlier in the EEO process, which has allowed for resolution of cases earlier in the complaint process.

What benefits has your agency received from these programs?

The OPDR has observed anecdotally that EEO complainants derive substantial satisfaction from the opportunity to discuss their complaints and desired corrective action with a neutral FBI SES level manager from outside their office or division, regardless of the outcome of the negotiation/mediation of their particular complaint.

What ADR success stories does your agency have to share with the President?

OPDR's ADR program has successfully mediated several settlements in various EEO cases that have resulted in an employee and manager returning to a productive relationship, thereby benefitting the mission of the Agency.

What are your agency's ADR goals, including resources necessary for the future?

One of the OPDR's goals is the improvement of training provided to the SES level managers who are tasked with negotiating or mediating an informal resolution of EEO complaints, with a view toward increasing the number of viable and implemented informal resolutions.

REPORT TO THE PRESIDENT ON AGENCY ADR ACTIVITIES

Agency name: Federal Bureau of Prisons

Agency Dispute Resolution Specialist and other ADR points of contact:

Name: Mina Raskin, Counsel for Dispute Resolution

Telephone: 202-305-0195

Email: mraskin@bop.gov

Does your agency have an ADR policy statement?

No. All policy statements must be negotiated with the union. Until we receive data from our recently implemented pilot programs (see below), the union will not negotiate a policy statement.

What is your agency's ADR budget?

We do not have a separate budget for ADR. We have access, however, to the budget of the Office of General Counsel to fund ADR activities. There have been no problems in obtaining the resources necessary to fund our ADR activities to date.

How many FTE's does your agency dedicate to ADR?

There is one full-time employee, the Counsel for Dispute Resolution, dedicated to establishing ADR programs within the Bureau of Prisons ("Bureau"). A second full-time employee serves as the Bureau's Ombudsman dedicated to resolving employee work issues. In addition, the staff within the EEO office assist when necessary. We are also researching the possibility of adding an intern position to assist the Counsel for Dispute Resolution.

What programs has your agency established during FY 1999 pursuant to the Administrative Dispute Resolution Act and the President's directive to promote greater use of ADR?

We have conducted several pilot projects in the area of workplace disputes. The first two pilot projects evaluated the use of mediation and/or facilitated negotiation to resolve formal EEO complaints. One pilot was conducted in the Central Office and the second was conducted in our Mid-Atlantic region. The results of the two pilots were a 9% and 25% resolution rate of the complaints selected. By observing the pilots, we were able to gather information on how to best structure an ADR program in the workplace dispute area.

The next two pilots dealing with workplace disputes are still ongoing. Both pilots are being conducted at six of our institutions in the Mid-Atlantic region. The first pilot establishes an informal dispute resolution program for resolving workplace disputes. At each of these institutions, the warden and local union president jointly selected a collateral duty dispute resolution specialist ("DRS"). This individual was

selected based on his or her reputation for problem solving, neutrality, and communication skills. All six of the Dispute Resolution Specialists were provided substantive human resource and labor management training, and also conflict resolution and mediation skills training. Conflict resolution/mediation training was also provided for managers and union members at each of the six institutions. The Dispute Resolution Specialists are available to provide advice and attempt resolution of any type of workplace dispute. All staff, including supervisors, may contact the DRS. If the DRS attempts resolution of the dispute, he/she will have 10 days to resolve the issue. If the issue is not resolved in 10 days, the regional dispute resolution administrator will have 10 days to resolve it and, if unsuccessful, the Counsel for Dispute Resolution from Central Office will have 10 days. Thus, the informal resolution process will be 30 days or less.

The second pilot project we are conducting at these same six institutions assesses the use of mediation in the counseling stage of the EEO process. The EEO counselors at each of these institutions have been trained to offer mediation to staff during the counseling stage.

Both of these pilot projects were explained to all staff at a staff recall at the local institutions. Some institutions have provided additional information to staff through the use of staff newsletters.

The last ADR program we initiated in FY 1999 is in the procurement area. A design committee consisting of representatives from the Office of Procurement and Property, Design and Construction Branch, and Office of General Counsel, have been meeting to develop an ADR program in the procurement area. Currently, the Bureau is working with the Department of Transportation Board of Contract Appeals to assess the use of a mini-trial to resolve a construction contract termination for a default case that has been appealed to the Board. Both parties have agreed on the use of a Board judge to serve as a neutral on a three person panel. (There will be a representative from the Bureau and the contractor also on the panel.) The success of this process will be evaluated and will assist us in developing an ADR procurement program for the Bureau.

What ADR programs has your agency expanded or improved during FY 1999?

All of our ADR programs were initiated during FY 1999.

What benefits has your agency received from these programs?

Although it is too early to analyze the specific benefits from the recently implemented pilot projects, general benefits have been gained from educating top management and union officials on the use of ADR and Conflict Resolution. Before the Bureau created the position of Counsel for Dispute Resolution, many top managers and union officials had no knowledge of ADR and Conflict Resolution and, therefore, did not support it. During FY 1999, three hours of Conflict Resolution/ADR training were provided to all of the Bureau's wardens (approximately 100), many of the union's executive board members, 30 managers from Central Office and also to management and local union members at several of the Bureau's

institutions. In addition, all of the regional EEO Investigators and 62 collateral duty EEO Investigators received eight hours of ADR/Conflict Resolution training. Six hours of Mediation Advocacy training was also provided to over 50 legal staff.¹ Because of this massive training effort, staff have commented that they have used the basic skills learned to manage their own conflict, both in the workplace and at home. Staff are not uncomfortable in attempting to mediate their own disputes and will also be familiar with the formal mediation process if requested to participate in the future.

What ADR success stories does your agency have to share with the President?

Although our union was skeptical of the use of ADR at first, because of the education provided to their executive board, they have recently requested ADR training and further dedication of resources to the ADR mission of the Bureau.

What are your agency's ADR goals, including resources necessary for the future?

While we await data from the pilot projects currently being conducted, we believe ADR will play a significant role within our organization. Our ultimate goal is to create a national ADR program to aid in resolving workplace disputes. Once more definitive data from the pilot projects is evaluated, we can then develop the strategic steps necessary to implement our program. We also hope to implement an ADR program in the procurement area by establishing a national policy statement and providing training for all of the Bureau's procurement staff.

¹By the end of June 2000, approximately 120 additional legal staff will be provided Mediation Advocacy training.

REPORT TO THE PRESIDENT ON AGENCY ADR ACTIVITIES

Agency Name: Federal Deposit Insurance Corporation (FDIC)

Agency Dispute Resolution Specialist and other ADR points of contact:

Name: Erica F. Cooper

Title: Deputy General Counsel

Tele. (202) 898-8530

Email: ecooper@fdic.gov

Name: Richard T. Aboussie (DRS)

Title: Associate General Counsel

Tele. (202) 736-3022

Email: raboussie@fdic.gov

Does your agency have an ADR policy statement?

Yes. The FDIC Statement of Policy on Alternative Dispute Resolution is published at 62 Fed. Reg. 66370 (1997).

What is your agency's ADR budget? \$

If you do not have a budget, how are your ADR activities funded?

The FDIC does not separately fund ADR activities as a "line item" on the FDIC's budget. Rather, workload, demand for services, training needs, and other factors determine the level of resources devoted to ADR. Organizationally, the FDIC has established an ADR Unit within the Corporate Operations Branch of the Legal Division, but the ADR Unit serves all FDIC Offices and Divisions.

How many FTE's does your agency dedicate to ADR? 13

If none, how are your ADR activities staffed?

What programs has your agency established during FY 1999 pursuant to the Administrative Dispute Resolution Act and the President's directive to promote greater use of ADR?

See attached report.

What programs has your agency expanded or improved during FY 1999?

See attached report.

What benefits has your agency received from these programs?

See attached report.

What ADR success stories does your agency have to share with the President?

See attached report.

What are your agency's ADR goals, including resources necessary for the future?

See attached report.

Background

In a Presidential Executive Memorandum encouraging the use by federal agencies of ADR, the President established the Interagency ADR Working Group (IADRWG). At the first meeting of the IADRWG, the Attorney General of the United States set a goal for each federal agency to establish at least one new ADR program or substantially enhance an existing program during 1999. To assist federal agencies to achieve this goal, four substantive sections were formed by the IADRWG to address the use of ADR in the federal sector. These sections of the IADRWG provide agencies with the opportunity to learn from one another, to share resources, and to benefit from agencies with more ADR experience.

The FDIC was invited to co-chair the IADRWG section focusing on the use of ADR in managing workplace disputes. FDIC Deputy General Counsel Erica Cooper and United States Postal Service General Counsel Mary Elcano serve as co-chairs of the Workplace Disputes Section, which is composed of 140 individuals from 45 different agencies. FDIC personnel participate in each of the other three sections as well.

ADR Programs Established or Expanded During 1999

During 1999, pursuant to the Administrative Dispute Resolution Act (ADRA), the FDIC drafted and circulated internally an arbitration policy and directive for the use of binding arbitration. The policy will address the use of arbitration for resolving a variety of disputes arising in various areas of FDIC operations. When approved, publication of the policy will announce to the public that binding arbitration may be used on a voluntary basis in certain circumstances as a dispute resolution mechanism.

The FDIC also approved an arbitration pilot program to test the effectiveness of arbitration in resolving certain contract disputes arising between the Corporation and third parties contracting for the sale of goods and services to the FDIC. The pilot has been developed in accordance with the ADRA. The use of arbitration through the pilot is voluntary on the part of both parties.

In addition, during 1999, the FDIC trained a significant number of managers and supervisors in general ADR awareness and the specific application of ADR to their work. This resulted in supervisors and managers requesting further ADR training for themselves and other personnel. The FDIC will undertake further training to assist personnel to recognize the opportunity for application of ADR to work situations involving potential conflict.

Also during 1999, the FDIC substantially enhanced and improved its Equal Employment Opportunity (EEO) Mediation Pilot project. The remainder of this report will focus on the FDIC's EEO Mediation pilot program.

The FDIC EEO Mediation Program

Internally the FDIC has introduced a mediation alternative at both the informal counseling and formal complaint stages of the EEO complaint resolution process. The FDIC initially established an EEO Mediation Pilot project in October of 1998. Originally, the pilot project was limited to the informal counseling stage and offered mediation to approximately one-half of the individuals whose informal EEO counseling was unsuccessful in resolving their claim of discrimination. The pilot project initially used trained in-house mediators.

In 1999, the EEO Mediation Pilot project was improved and substantially expanded. Through a letter and brochure delivered to every employee's home, the Chairman of the FDIC introduced the EEO mediation alternative in both the informal counseling and formal complaint stages of the EEO complaint resolution process. In the informal stage, all aggrieved employees now have the option to engage in mediation after traditional EEO counseling. In the formal stage, EEO complainants have the option of participating in mediation after receiving the report of investigation of their complaint. Through comments received from parties and close monitoring of the initial pilot project, the FDIC learned that in-house mediators were not perceived as neutral. The FDIC modified the pilot program to use outside contractors as mediators. Both the informal and formal EEO programs employ trained professional mediators from outside the Corporation.

In both the informal and formal stages, mediators facilitate communication and resolution between the immediate parties to the dispute. In the informal stage, interest-based mediation is used. Interest-based mediation seeks to uncover the underlying interests and needs of the parties to a dispute and, if possible, allows the parties to reach a settlement that acknowledges those interests and satisfies the needs of all parties. Evaluative mediation is employed at the formal stage. In evaluative mediation, the mediator uses substantive knowledge and experience, objective standards (i.e., legal precedent), and other pertinent information to assess the relative strengths and weaknesses of the disputing parties' respective positions and offers an outcome prediction about the merits of the case. Based upon this neutral evaluation, the mediator seeks to facilitate a resolution of the dispute between the parties.

The EEO mediation program continues to operate as pilot projects in both the informal and formal stages, permitting the FDIC the flexibility to closely monitor all aspects of the project and make appropriate changes as needed to the program.

Benefits From ADR Programs

To date there have been 16 mediations in the informal stage of the FDIC EEO Mediation pilot. Six of these mediations have resulted in settlements between the parties. While the total numbers are not large, the greater than one-in-three resolution rate is promising. The resolutions that have been reached through mediation in the informal stage have come after traditional counseling which in each case produced no resolution. Mediation at the formal stage was offered in October of 1999. To date no mediations have occurred in the formal stage.

Beyond the specific EEO Mediation Program and predating the Administrative Dispute Resolution Act and Presidential Executive Memorandum, the FDIC has used and benefited from ADR as an alternative to litigation with outside parties. Dating back to the 1980s, the FDIC's initial efforts in the use of ADR were essentially reactive. The FDIC sought more economical and efficient ways of addressing disputes, primarily litigation, spawned by the banking and thrift crisis of the late 1980s and early 1990s. From 1991 through 1998, the FDIC saved approximately \$ 68,970,777 in estimated outside legal fees and expenses using ADR as an alternative to litigation.

By initiating its ADR efforts before many of the congressional and executive mandates, the FDIC was able to develop a staff that was not only familiar with, but also experienced in, the use of ADR. In this way, the FDIC was readily able to comply with court-ordered, congressional, or presidential mandates for ADR.

Today the FDIC is proactive in its use of ADR, seeking to manage conflict rather than react to it. The FDIC uses a broad spectrum of ADR mechanisms including facilitation, mediation, and arbitration. In particular, the FDIC has benefited from labor-management partnering as an ADR mechanism designed to prevent conflict. The FDIC partners with its employee's representative, the National Treasury Employees Union, in several different areas. Contract review teams made up of union and management review many contracts for outside services. Labor-management councils are in place and meet regularly both at headquarters and in regional offices to encourage dialogue and conflict prevention.

An ADR Success Story

One example of an FDIC ADR success story in 1999 involves the mediated resolution of an EEO dispute in the informal stage. After traditional EEO counseling, this appeared to be a "hopeless case." After mediation, not only did all parties come away satisfied that their concerns had been met, but the individuals involved and the FDIC were saved a great deal of time and money and were also able to maintain agency policy.

As part of the FDIC's EEO pilot project, an employee's disability discrimination complaint was presented for mediation. The issue involved work the employee had done while home on sick leave, which the employee claimed her supervisor by implication had approved. The problem arose when the employee sought compensation for her work, and the supervisor responded that the work would not be approved because FDIC policy does not permit compensation for work at home.

There was no dispute over the fact that the employee had done work at home. Management believed that due to the clear FDIC policy the FDIC was not able to compensate the employee for her work. Having gone through the traditional EEO informal counseling, management was not optimistic that mediation would offer an opportunity for resolution. In addition, due to travel time and costs as well as the need to rent a conference room, this mediation would incur significant FDIC resources.

During the mediation process, the mediator met privately with management and explored alternative means of compensating the employee. Despite the many obstacles to resolution, the parties came to an agreement. The employee would receive a cash award justified by her long-term work on a committee that was directly related to the work she had done at home. In return, the employee agreed to drop her EEO complaint. Another very important part of the agreement for the supervisor was that the employee stated in writing that her supervisor had not intended to discriminate against her in refusing to approve her work.

The FDIC's ADR Goals

The immediate goals of the FDIC EEO Mediation pilot project include continued evaluation, further refinement, and implementation on a permanent basis. In addition, the FDIC plans for further educational and marketing efforts to firmly establish the mediation alternative in the EEO complaint resolution process. Education as to the mediation process should alleviate unfamiliarity and hesitancy concerning the mediation process.

More broadly, the FDIC will continue to promote the appropriate use of ADR throughout its operations. Improvement of the FDIC's partnering efforts is a high priority. The creation of an environment of collaboration in which all employees are valued is a primary goal of the Chairman of the FDIC. ADR and appropriate conflict management is a valuable tool in creating that environment.

REPORT TO THE PRESIDENT ON AGENCY ADR ACTIVITIES

Agency name: Federal Emergency Management Agency (FEMA)

FEMA's Dispute Resolution Specialist and other ADR Points of Contact:

Name: Cynthia Mazur
Telephone: 202-646-4094
Email: cindy.mazur@fema.gov

Name: Carolyn G. Davis
Telephone: 202-646-4200
Email: carolyn.g.davis@fema.gov

Does your agency have an ADR Policy statement?

FEMA has an ADR policy statement.

What is your agency's ADR budget?

FEMA's ADR budget is \$262,678.

How many FTE's does your agency dedicate to ADR?

FEMA dedicates 3 FTE's to ADR.

What programs has your agency established during FY 1999 pursuant to the Administrative Dispute Resolution Act and the President's directive to promote greater use of ADR?

James Lee Witt, the Director of FEMA, has appointed an ADR Specialist to create a full-time ADR Office to serve FEMA at its Headquarters in Washington, D.C., its ten Regions, and its numerous Disaster Field Offices. The ADR Specialist is promoting, advocating for, and facilitating greater use and understanding of ADR. ADR is being used to increase customer satisfaction both with our internal and external customers.

At the request of our Director, FEMA established an ADR Task Force to review the number and type of EEO complaints within our agency. The Office of General Counsel (OGC), the Office of Human Resources (HR), and the Office of Equal Rights (ER) conducted several meetings and then met for a one-day, off-site meeting. We hired an outside facilitator to help us coordinate consensus to design a strategic plan to assist our employees with these issues.

FEMA made a commitment, among our ER Office, our OGC, and our Office of HR, to regularly send at least one person to the ADR working groups created by Janet Reno. Sharing the responsibility among

the Divisions, FEMA probably had an above 90% attendance rating for the Workplace Disputes Section Meetings. Indeed, our ADR Specialist served on one of the Panels hosted by the Postal Service.

What ADR programs has your agency expanded or improved during FY 1999?

The ER Office, the Unions, the Office of HR, the OGC, and the ADR Specialist are working together to create an ADR Pilot process to comply with the new EEO regulations. This process will expand upon and improve the prior ER process to make ADR available. This is expected to be in place by January 1, 2000. In addition, this same group is working together to create a Pilot ADR program with an expanded focus to serve people with concerns unrelated to ER.

This past year, FEMA has funded training in ADR skills for at least five employees. They have been trained in mediation, facilitation, conciliation, dispute prevention, confidentiality, and enhanced negotiations.

What benefits has your agency received from these programs?

The appointment of an ADR Specialist by James Lee Witt to create a full-time ADR Office has sent a strong message of support for creative problem solving and systemic conflict management to our staff and public clients.

As a result of the vision of our Director, our five key Offices (ADR, ER, HR, Unions, and OGC) are coming together to discuss systemic solutions to issues. These units have made a greater commitment to ADR and have come to better understand and work closer with each other.

Generally, FEMA has enjoyed an increase in settlements, withdrawal of formal complaints, and informal resolutions as a result of our new, improved, and expanded programs. As stated in our success story detailed below, ADR has allowed us to support a member of the public who suffered personal hardship to prevent and expose fraud against the United States Government.

What ADR success stories does your agency have to share with the President?

One of our success stories from the past year had its origins in Hurricane Georges which wreaked havoc on the Island of Puerto Rico in September 1998. After the Hurricane, a local community contracted for debris removal. Based on information provided by the principal contractor, the mayor of the community was investigated, convicted, and incarcerated for fraud in connection with these debris removal contracts. The community then chose not to pay any of the contractors because the community and its debris removal contractors and subcontractors disagreed as to which company actually performed the work, the total amount of debris, and the amounts of money owed to them. This situation involved a criminal investigation by the FBI, incarceration of the community mayor, litigation filed against the community by a subcontractor, allegations of fraud and conspiracy by all parties, death threats, and bankruptcy petitions. The principal contractor asked FEMA for assistance in arranging payment for its debris removal work.

In accordance with its laws and regulations, FEMA normally assists the Governor in managing disaster response and overseeing the communities as they enter into contracts to rebuild. FEMA does not enter into debris removal contracts, nor can FEMA be responsible for monitoring disputes regarding them. Absent agreement among the parties, a lawsuit involving all parties to the seven relevant contracts might have been the only way to get a final, neutral, and binding ruling on the facts. Not only would litigation have been time consuming, but also the delay in payment would have sent the message that a contractor who exposed public corruption would be financially punished.

FEMA suggested that all parties, the Governor, the community, the three contractors, and FEMA, sit down with two mediators and try to resolve this matter. FEMA agreed to pay all costs associated with the mediators. The parties agreed. The mediation was very difficult; one party was even asked to leave the proceedings and was banned from the premises. After a long and very uncertain time of negotiation, the mediators were able to craft a conceptual agreement acceptable to all.

Although FEMA was not a party to these contracts, FEMA wanted to facilitate an acceptable solution. FEMA committed a large amount of resources in time and money to bring this project to resolution. The principal contractor wrote a letter to FEMA, which included the following statements:

I write this letter to praise certain individuals who have gone above and beyond the call of duty in representing FEMA and the people of the United States.... I am expressing my appreciation for the professionalism and sincerity exhibited by [FEMA].... FEMA intervened into the dispute and arranged for mediation in hopes of reaching an amicable resolution. Through [FEMA's] initiative and good judgment, mediation was arranged.... I have been practicing law for almost 25 years and have never dealt with issues and positions as complex and difficult as those presented in this matter.... I have to admit that during the process, I was very pessimistic that a resolution could be reached. Had [FEMA] not pursued the matter with uncommon vigor, it would probably be wrapped up in court for many years.... I look forward to future involvement with FEMA [and] any such contact will be my pleasure.

What are your agency's ADR goals, including resources necessary for the future?

In the next year, FEMA will complete setting up the ADR Office. In conjunction with the Unions, the HR Office, the ER Office, and the OGC, the ADR Office will commence two ADR pilot programs to service Headquarters, the Regions, and its Disaster Field Offices. The ADR Office will coordinate with these same offices to help FEMA's fixed-site, non-FTE employees, who presently do not have a grievance system, design their own ADR systems.

The ADR goals include establishing a cadre of mediators/adr experts who will be able to travel to support our Regions and Disasters. The ADR Office must create all of the necessary, supporting ADR documents. The ADR Specialist must set up a system to evaluate the ADR program, the mediations, and the settlement agreements both for process and substance. The ADR Office must have a computer tracking system to collect data on its activities.

The ADR Specialist will raise the level of awareness at FEMA regarding the potential uses of and creativity available with ADR. The ADR Office must advocate for training opportunities in communication and ADR skills for all FEMA staff, especially our managers. The ADR Specialist will try to make the element “use of ADR” an aspect on performance evaluations for managers.

The ADR Specialist will need an office manager, a cadre of trained neutrals, and support staff. The current budget for FY 2000 specifically earmarks \$193,000 for the ADR Office. Training for employees will need to be funded out of our agency’s training and exercise division. Individual mediations will need to be paid for by the office or Region requesting it. Our ER Office has 42 Equal Employment Counselors who do EEO counseling as a collateral duty. They also have 30 intermittent employees who do counseling full-time at disaster sites. These services need to be factored in as resources necessary for the future. The ADR budget will need to be maintained and expanded to the extent that the Agency is benefitting from the work of the ADR Office.

REPORT TO THE PRESIDENT ON AGENCY ADR ACTIVITIES

Agency Name: Federal Energy Regulatory Commission

Agency Dispute Resolution Specialist and other ADR points of contact:

Agency Dispute Resolution Specialist

Name: Richard L. Miles
Telephone: 202-208-0702
Email: richard.miles@ferc.fed.us

Other ADR points of contact

Name: Office of the Dispute Resolution Service
Telephone: 1 877 FERC ADR (Toll free)
Email: ferc.adr@ferc.fed.us

Does your Agency have an ADR policy statement? Yes

What is your agency's ADR budget?

The Commission's newly formed Dispute Resolution Service (DRS) has a full time staff and a budget for travel and training. The amount currently allocated is a temporary amount that will increase during the year. Also, the Commission intends to conduct basic ADR training for all Commission employees during FY 2000. The total amount spent on ADR activities will be determined later in the current fiscal year.

How many FTE's does your agency dedicate to ADR?

There are 6 FTEs dedicated full-time to ADR. There are also a number of other Commission employees that, while not dedicated exclusively to ADR, devote many hours to doing ADR work, such as settlement judges, an OAL special assistant, and hydro facilitators in the alternative licensing process.

What programs has your agency established during FY 1999 pursuant to the Administrative Dispute Resolution Act and the President's directive to promote greater use of ADR?

In February 1999, Chairman Hoecker established the Dispute Resolution Service to foster the increased use of ADR in all subject areas that the Commission regulates. The DRS has two major functions: to perform ADR services involving internal and external disputes, e.g., convening, facilitation, mediation; and to promote and enhance the use of ADR within and outside the Commission before and after disputes are filed with the Commission.

The DRS is a small team-based unit that is independent and neutral. The DRS is not involved in the decisional processes on substantive issues, does not advocate positions and does not conduct investigations. Instead, the DRS is a service-oriented office and dedicated to meeting the ADR needs of the Commission's customers.

As noted above, the dispute resolution specialists within the DRS have multiple roles. They champion the use of ADR internally and externally. They provide and assist others in providing education and training to staff and external groups on the benefits of ADR. The DRS members help to screen disputes to determine if ADR application is appropriate, convene sessions to initiate ADR processes, perform ADR services if requested (e.g., facilitation, mediation), and evaluate completed ADR processes.

The DRS has also started "Inreach" and "Outreach" efforts. The objective of these efforts is to champion ADR as the first choice in dispute resolution. As part of its Inreach efforts, the DRS will educate the staff in the basics of ADR, and will work with Human Resources to promote the use of ADR in employee disputes. As part of its Outreach, the DRS has met, and will meet with groups to explain what ADR is, why it should be used, how it can be initiated with the help of the DRS, and the benefits a third party neutral brings to the process.

The DRS staff knows that participants in an ADR process must feel that they can speak openly and without fear that their statements may later be used against them if settlement is not achieved. Accordingly, except as to the procedural status of any ADR process, all DRS communications with participants to a dispute, are confidential and privileged. The Commission's separation of functions rule specifically prohibits the DRS from communicating statements made in confidence to decision-makers or their advisors. Because the DRS staff members are non-decisional employees, the *ex parte* rules do not prohibit the staff members from talking to the participants on substantive issues.

What ADR programs has your agency expanded or improved during FY 1999?

In FY 1999, the Commission assigned more disputes for settlement procedures. The Commission also codified into its regulation the Enforcement Hotline (which addresses a variety of informal complaints and questions), and added one ADR specialist to the Office of Administrative Litigation to help encourage parties in a hearing process to use ADR to resolve issues. The Commission also issued a rule initiating voluntary collaborative procedures in pipeline certificate proceedings, and increased its efforts to encourage participants in hydroelectric proceedings to use similar procedures for relicensing proceedings.

What benefits has your agency received from these programs?

While the new DRS program has been in place for less than a year, it is clear the Commission and its customers that participated in the ADR processes initiated by the DRS have reduced the time needed to resolve disputes and saved considerable amounts of money. The benefits of expanded programs include a similar savings in time and cost to staff. Another benefit is that other offices are beginning to develop a better appreciation for the value that ADR can bring in administering the Commission's workload. Also,

the Office of Administrative Litigation has begun to utilize various ADR techniques to assist the parties in focusing the discovery process. This has resulted in a significant savings of time and money by reducing the amount of document production, depositions, and interrogatories. In addition, OAL has discovered that the early convening process provides the parties an opportunity to discuss the issues and interests surrounding the case. These early convening sessions have increased the use of creative unassisted settlement approaches.

What ADR success stories does your agency have to share with the President?

One of the first uses of ADR by the DRS occurred in a case involving the Governance Structure of the New England Power Pool (NEPOOL). After rejecting several proposals offered by the 114 member NEPOOL Organization for a governance structure that would have the independence necessary for a competitive wholesale electric market, the Commission gave NEPOOL sixty days to come up with an acceptable proposal. It further encouraged NEPOOL to contact the new DRS to help resolve the impasse between the agency and NEPOOL. The Pool accepted the offer. The Director of the DRS convened a meeting in Boston and worked with the parties to establish a process designed to produce a governance structure acceptable to the Power Pool members, other interested parties and the Commission.

The parties agreed to proceed with a mediation process using one of the Commission's Administrative Law Judges, Deputy Chief Judge William J. Cowan, as mediator. Judge Cowan guided the parties through a structured mediation process. In an initial two-day session, he first helped the parties identify common assumptions and principles for a new governance structure. He then divided the members and interested parties into several groups with common interests. Following several meetings with the subgroups, Judge Cowan was able to outline a possible solution. Judge Cowan helped form working groups that focused on discrete issues.

Following additional mediation sessions, the members reached a settlement. NEPOOL made the filing on time and the Commission approved the structure that resulted from the settlement process.

The NEPOOL success story was followed with a similar story involving the New York Power Pool. There the parties agreed to use Judge Judith Lee, an Administrative Law Judge with the New York Public Service Commission, as the lead mediator. As with NEPOOL, the mediator played a vital role in bringing the parties to a consensus that lead to a Commission- approved settlement. In both cases, the parties were many, the positions were conflicting, and the cases were headed toward costly and time-consuming adjudication. These two examples demonstrate that the mediation process can save the parties time and money and can help the parties develop their own solutions while laying the foundation for better working relationships.

An example of the use of an ADR process in a gas proceeding was Phelps Dodge Corp. v. El Paso Natural Gas Co. In this proceeding a complaint was filed in 1997 that was the subject of three Commission orders. In the last order, the Commission directed the DRS to convene the parties to initiate discussions on using ADR as a viable tool to resolve the dispute. The parties agreed to use mediation

and selected a mediator from the DRS. In September 1999, a one-day mediation session was held with the parties. During the discussions, the parties focused on their business interests and options that would address the expressed interests. By the end of the day, an agreement was reached and potential hearings were avoided. Appellate review of the Commission orders was also avoided. The settlement reached also resolved another contested proceeding pending before the Commission that had been the subject of numerous protests. As a result of the settlement, the protests were withdrawn.

In the Summersville Water Power Project, the National Park Service (NSP) requested the DRS to arrange a meeting with the United States Crops of Engineers, Gauley River Power Partners, L.P., and the NSP to resolve a dispute involving the construction of facilities at the Summersville Water Power Project. DRS convened the meeting and, at the request of the parties, conducted a mediation process. The mediation efforts of the DRS representative were successful and the parties reached an agreement. The agreement provided for an equitable resolution of the dispute, accelerated implementation of appropriate mitigation, and avoided costly litigation. The process also enhanced the working relationship among the participants. In a post-evaluation survey, one participant stated that "I know this agreement would not have been possible on our own, without the Service of [the DRS]."

The alternative licensing procedures has proven to be effective by reducing costs and shortening the licensing process. Moreover, the alternative licensing process is beginning to represent a greater proportion of the Commission's licensing efforts. A notable example of the success of this innovative process involved Avista Corporation's Cabinet Gorge and Noxon Rapids projects on the Clark Fork River in northwest Montana and northern Idaho. Using the alternative licensing procedures, Avista filed a license application that incorporated a signed settlement agreement between 27 parties that included state and federal agencies, Native American Tribes, and public interest entities. The issues that were settled covered a wide range of topics such as fish passages for threatened and endangered fish species, protection of cultural resources, and hydropower economics. As a result, the parties' interests were met, the licensing process was significantly shortened, and sizable economic savings were obtained.

An example of how staff can facilitate settlement discussions involved two hydroelectric projects located on the Platte River, Nebraska. In 1998, a settlement was filed that resolved issues contested for more than 18 years involving water rights, endangered species and hydro power operation. A team of Commission staff non-decisional employees facilitated the multi-party settlement, incorporating compacts among the states of Nebraska, Colorado, and Wyoming. This settlement was instrumental in the issuance of two major hydroelectric power licenses on the Platte River and provides for cooperation among the power producers, property owners, and the environmental resource agencies.

What are you agency's ADR goals, including resources necessary for the future?

Chairman Hoecker has stated that "[t]he Commission, as it re-engineers itself to meet the challenges of a competitive bulk power market, must promote early resolution of contested matters and complaints through expanded use of consensual decision-making processes, particularly ADR. Using professionally

trained neutrals can help find creative solutions to seemingly intractable disputes, where litigation would impose a disproportionate burden on one or both of the parties.”

The Commission’s newly-formed Dispute Resolution Service has the following goals within and outside the Commission: to promote the use of ADR; to help develop participants’ ADR skills; to initiate early ADR use; and to employ ADR techniques successfully. As noted above, the Commission has for the first time dedicated FTEs solely for the purpose of ADR. In addition, Commission employees and managers will have the opportunity to participate in one-year rotational assignments to the DRS. The detailed employees will be trained in ADR theory and practice and will experience the practical application of ADR. At the end of the one-year detail, the employees will return to the program offices to apply their ADR skills there. The DRS will also consider offering internships for students pursuing graduate degrees in ADR and mediation. While the need for ADR use is high, the future demand for ADR will dictate whether additional resources should be allocated for ADR purposes.

Another goal is to maintain a close working relationship with the Interagency Dispute Resolution Working Group. The Commission, through its Alternative Dispute Resolution Specialist strongly supports the Working Group's efforts in advancing the use of ADR.

REPORT ON THE
FEDERAL ENERGY REGULATORY COMMISSION'S
ALTERNATIVE DISPUTE RESOLUTION INITIATIVES

**The Dispute Resolution Service
Federal Energy Regulatory Commission
December 20, 1999**

REPORT ON THE FEDERAL ENERGY REGULATORY COMMISSION'S ALTERNATIVE DISPUTE RESOLUTION INITIATIVES

On May 1, 1988, President Clinton issued a message designating an Interagency Dispute Resolution Working Group to facilitate and encourage agencies to use alternative means of dispute resolution and negotiated rulemaking. He asked that each agency initiate one ADR program in FY 1999. The Attorney General and the Office of Management and Budget established four subgroups to facilitate the President's directive. The Federal Energy Regulatory Commission (Commission) is committed to the goal of increased use of alternative dispute resolution (ADR) as a means to resolve disputes. In FY 1999, Chairman Hoecker took a number of steps to initiate new ADR activities and promote greater use of existing ADR capabilities. As discussed below, further expanding the use of ADR will continue to be a goal for FY 2000.

Background

The Federal Energy Regulatory Commission regulates key aspects of the electric power, natural gas, and oil pipeline industries. For decades, the regulatory community placed little reliance on markets to achieve reliable and low-cost service and instead turned to the Commission to regulate these markets. Today, the Commission is dedicating its resources primarily to promoting competitive markets for energy while continuing to regulate the monopoly elements of the industries.

The Commission is also charged by statute with regulating the siting and environmental aspects of natural gas pipelines and non-federal hydroelectric projects. Review of such projects has become more complex in recent years as the Commission implements environmental requirements, and the public's interest in the environment and participation in the Commission proceedings increases.

The Commission's approach toward the development of competitive energy markets and collaborative processes in project development reflects a major conceptual change that was all but unthinkable just a few years ago. Because these industries are becoming more competitive, and new issues are developing much more quickly than ever before, the Commission must be flexible, quick, and innovative to meet these new challenges even as it continues to fulfill its traditional responsibilities. To address these dynamics, the Commission has developed new collaborative procedures to foster consensus in these difficult cases. It is making greater use of ADR processes in lieu of formal litigation to resolve specific disputes.

Historic Use of ADR in Regulatory Disputes

It has been the Commission's long-standing policy to expedite the processing and resolution of its proceedings. The Commission has a history of advocating settlements to avoid full litigation and to help administer its workload. Indeed, the Commission and the courts have long recognized that settlements are part of the administrative process. In 1962, the United States Court of Appeals for the 5th Circuit explained:

... Commission approved voluntary settlements are an important and desirable mechanism as the Commission undertakes the staggering burden of dealing with the ceaseless flow of the ever-more complicated problems Consequently settlements should be encouraged, not discouraged. 2/

2/ The Commission is the first to recognize the indispensability of settlement. It regards promotion of voluntary settlements to be a duty imposed by law [The Commission] had this to say,

" . . . settlements, as a rule, are favored in the law. § 5(b) of the Administrative Procedure Act requires us to afford all interested parties in proper proceedings opportunity for, among other things, offers of settlement, or proposals of adjustments, where time, the nature of the proceeding, and the public interest permit."

Texas Eastern Transmission Corp. v. FPC, 306 F.2d 345, 347 (5th Cir. 1962).

Following the passage of the Administrative Dispute Resolution Act of 1990 (ADRAct), the Commission in Order No. 578 renewed its policy of encouraging settlements and the use of ADR in order to process its cases fairly, effectively, and expeditiously. Order No. 578 implemented regulations consistent with the ADRAct, and established procedures for approving ADR in particular proceedings. These ADR procedures are voluntary on the part of the parties and supplement previously established procedures such as settlement judge procedures.

"Consensual solutions can optimize outcomes for all parties, and ADR can help parties find consensus within the time frames appropriate to our ever more dynamic energy markets. Thus, ADR is an increasingly important procedural tool for the Commission. We hope to continue building on our recent successes in this area."

Douglas W. Smith, General Counsel

The Commission's regulations provides for confidentiality in ADR procedures. Participants can talk freely with the neutral without fear that information concerning any dispute resolution communication, or any communication provided in confidence to the neutral, will be divulged.

Past Commission efforts to achieve settlements were initiated, in part, to help administer its workload. For example, the Commission instituted settlement judge procedures, an Enforcement Hotline to resolve informal complaints, and alternative hydroelectric licensing procedures. While these and other steps provided parties more procedural options to resolve disputes, the use of innovative ADR processes was fragmented.

In 1998, Chairman Hoecker instituted FERC First, a re-engineering effort designed to implement measures that will enable the Commission to provide valuable new services to coincide with the significant changes in the energy industry. One finding of this effort was that additional ADR services could provide

significant value to the Commission's customers. This added value could only be achieved, however, by elevating the profile of ADR at the Commission. This conclusion coincided with President Clinton's May 1998 message to federal agencies that they should create and enhance dispute resolution programs.

The Commission's Current Dispute Resolution Philosophy

To keep current with the changes in the energy markets, and to prepare for the future, Chairman Hoecker recognized that the presumption that traditional disputes could best be resolved through adjudicatory processes needed to be changed. The Chairman recognized that the public and private sectors needed to engage each other in a constructive way in the search for real and prompt solutions to the technical and operational problems that impede further efficiency gains and competition. Thus, the Chairman sought to promote early resolution of contested matters and complaints through expanded use of consensual decision-making, including ADR.

The Commission will continue to be confronted with legal, factual, and policy arguments that may need to be addressed in an administrative hearing or in a Commission order. Many disputes, however, could be most fruitfully addressed in the first instance by the participants focusing on meeting their business interests or resource protection interests.

Over the last year, the Commission has restructured its complaint procedures to foster increased use of ADR, issued rulemakings to develop collaborative procedures before pipeline certification filings are made, codified the Enforcement Hotline procedures into the regulations, and re-emphasized the benefits of using alternative licensing procedures for the numerous hydroelectric projects nearing license termination. The Commission has also referred more disputes to settlement judge procedures. In addition, the newly-formed Office of Administrative Litigation has added an ADR specialist to help encourage collaborative resolution on certain litigated issues. The Chairman also created the Dispute Resolution Service, a new unit dedicated solely to ADR implementation.

The above steps and the foundation laid down by Chairman Hoecker and the Commission have increased the acceptance of ADR as a viable dispute resolution tool.

Energy Projects

The Commission is responsible for licensing non-federal hydropower projects and certifying interstate natural gas pipelines. These projects raise economic, environmental and cultural implications that often conflict. Thus, the Commission is encouraging use of new collaborative processes that typically involve state and federal agencies, project proponents, non-governmental organizations, Native Americans, and the public. Significantly, the collaborative processes begin long before the filing of an application so that as many issues as possible are resolved before a proposed facility application is filed.

Hydroelectric Program

New environmental issues arise whenever projects licensed decades ago come up for license renewal. Many of these upcoming relicensing actions will be for large, complex projects that affect important environmental resources such as fisheries, endangered species, and recreational opportunities. During the next ten years, over 220 licenses will expire. Many of these license renewal applications will present complex and hotly contested issues that could take years to resolve unless settlements can be achieved through consensual resolution procedures.

To address this workload, the Commission developed an alternative pre-filing consultation process that uses a more collaborative approach than is used in the standard pre-filing process. This new alternative licensing process is designed, in part, to involve a wider range of participants at an earlier stage in the licensing process and to expedite the resolution of disputed issues. This innovative collaborative process can be tailored to meet the needs of the participants. The goal is to resolve as many environmental disputes as possible before a license application is filed.

The Commission has increasingly encouraged the use of the alternative licensing procedures. Over the last 18 months, the Commission has conducted many outreach sessions to familiarize federal, state, and other government agencies, Native Americans, non-governmental organizations, licensees, and the public with these new procedures.

The Commission's staff helps facilitate negotiations when appropriate. The Commission's technical experts actively assist the participants and may provide an informal neutral evaluation, or a "reality check" on disputed issues. Staff may also present solutions used in other hydroelectric proceedings. To improve staff skills in this area, the Commission conducted training sessions for these staff members in the art of facilitation.

The alternative licensing procedures have proven to be effective by reducing costs and shortening the licensing process. Moreover, the alternative licensing process is beginning to represent a greater proportion of the Commission's licensing efforts. A notable example of the success of this innovative process involved Avista Corporation's Cabinet Gorge and Noxon Rapids projects on the Clark Fork River in northwest Montana and northern Idaho. Using the alternative licensing procedures, Avista filed a license application that incorporated a signed settlement agreement among 27 parties that included state and federal agencies, Native American Tribes, and public interest entities. The issues that were settled covered a wide range of topics such as fish passages for threatened and endangered fish species, protection of cultural resources, and hydropower economics. As a result, the parties' interests were met, the licensing process was significantly shortened, and sizable economic savings were obtained.

An example of how Commission staff can facilitate settlement discussions involved two hydroelectric projects located on the Platte River, Nebraska. In 1998, a settlement was filed that resolved issues contested for more than 18 years involving water rights, endangered species and hydro power operation. A team of Commission staff facilitated the multiparty settlement, incorporating compacts among the states

of Nebraska, Colorado, and Wyoming. This settlement was instrumental in the issuance of two major hydro power licenses on the Platte River and provides for continued cooperation among the power producers, property owners, and the environmental resource agencies.

Pipeline Construction

The pipeline industry is proposing continued expansion of the network of natural gas pipelines to meet anticipated growth in demand. Many of these proposals are vigorously contested by the competing pipelines and by landowners who question the need for the new projects. Processing these contested proposals requires significant resources. The environmental review of such projects has become more complex and time-consuming, with numerous public meetings and conferences and voluminous pleadings. Collaborative approaches are needed to resolve disputes and strengthen relationships among various constituencies.

In FY 1999, the Commission issued a Final Rule (Order No. 608) to make available to those applying for new facilities and services an alternative, collaborative pre-filing procedure to promote more expeditious environmental analysis and more timely issue resolution. The goals of the collaborative procedure are to improve communication, expand public participation, and resolve potential conflicts earlier in the filing process. Under the new option, applicants notify the Commission, the public, including landowners, and state and local government officials of their intention to start pre-filing consultations. The Commission also added to its regulations the requirement for early notification of landowners affected by a particular pipeline project. The rule ensures that landowners are informed early and have ample opportunity to participate in the Commission's pipeline certificate process.

Markets, Tariffs and Rates

While the Commission moves toward increasing reliance on market-based solutions and reduced regulatory burden on competitive elements of the electricity and natural gas industries, many proceedings will raise hotly contested issues. Over the last eighteen months, the Commission has increased the use of technical conferences, settlement judge conferences and ADR to resolve contested issues quickly and without litigation.

The Commission also announced in its Final Rule regarding the establishment of regional transmission organizations (RTOs), that it plans to use a collaborative process to advance RTO formation. The Commission has found that its open access policies are creating market and technology demands that demonstrate a need for regionalization. The Commission believes that RTOs can better address competitive market issues and enhance the reliability of the transmission grid. To facilitate RTO formation in all regions of the nation, the Commission will employ a collaborative process.

Under the collaborative process, the Commission expects that public utilities and non-public utilities, in coordination with state officials, Commission staff, and all affected groups, will actively work toward the voluntary development of RTOs. The Commission proposed that regional workshops be held to initiate

implementation of RTOs. The Commission also proposed to make available staff resources, including its Dispute Resolution Service, to assist in designing and possibly facilitating regional collaborations.

In recent years, the Commission has also taken measures to initiate use of ADR by incorporating informal complaint procedures in tariff provisions. In Order No. 888, the Commission required public utilities providing electric transmission services in interstate commerce to file open access, non-discriminatory tariffs for such transmission services. The open access transmission tariff includes dispute resolution procedures. Similarly, in natural gas tariffs, the Commission's regulations require that a natural gas pipeline company must maintain tariff provisions containing procedures used to address and resolve complaints by shippers and potential shippers concerning affiliate transactions. For oil pipeline cases, the Commission's regulations require that all protested

rate filings be referred to a settlement judge and that the parties enter into good faith negotiations. In FY 1999, the Commission promoted the use of ADR by setting four contested oil pipeline cases for settlement judge procedures rather than sending them directly to hearing. The Commission staff has also provided expert assistance to other governmental agencies in resolving oil pipeline related matters.

"We see management as being fundamentally in partnership with employees and the union to achieve the overall aims of the agency. Conflict, while sometimes inevitable, should more often be the occasion for collaboration and growth than for confrontation. ADR techniques are an essential part of our overall strategy for handling conflict constructively."

Charles Whitmore, Director, Office of Strategy and Management

Ensuring Employee Awareness and Use of ADR

In 1994, the Commission issued a Policy Statement which encouraged Office Directors to use ADR techniques in appropriate aspects of the administrative activities of the Commission. The Commission also noted that ADR procedures should be used when appropriate to resolve EEO complaints and avoid costly and protracted investigations and litigation. The Commission encouraged the use of third-party neutrals during the earliest stages of an EEO complaint, preferably prior the time a complaint was formally filed. If a formal complaint is filed, ADR should be offered as a less adversarial means of dispute resolution.

In preparing its statement of Vision, Mission, and Values in FY 1998, the Commission acknowledged that its people are the Commission's most valued asset. The Commission historically has had less than ten workplace disputes per year. Even with this small number, the Commission will continue review its dispute resolution processes to determine which additional measures can be taken to encourage more consensual dispute resolution techniques in future workplace disputes.

Over the next year, the Dispute Resolution Service will begin basic ADR awareness training for all of the Commission's employees. The training should help employees recognize how they can work better

with their peers and supervisors in addressing conflicts so that more problems can be resolved early and satisfactorily for all affected parties.

New Measures to Advance The Use of ADR

The Dispute Resolution Service

In FY 1999, Chairman Hoecker established the Dispute Resolution Service (DRS) to foster the increased use of alternative dispute resolution. The DRS has two major functions: to perform ADR services, (e.g., convening, facilitation, mediation); and to promote and enhance the use of ADR before and after disputes are filed with the Commission.

The DRS is a service-oriented team that is dedicated to meeting the ADR needs of the Commission's customers. The DRS is independent and neutral. The DRS is not involved in the decisional processes, does not advocate positions, and does not conduct investigations.

The dispute resolution specialists within the DRS have multiple roles. They champion the use of ADR internally and externally. They provide and assist others in providing education and training to staff and external groups on the benefits of ADR. The DRS helps screen disputes to determine if ADR application is appropriate, convenes sessions to initiate ADR processes, performs ADR services if requested (e.g., facilitation, mediation), and evaluates completed ADR processes.

"ADR is no longer a dispute resolution tool that can be overlooked. Decision makers are learning the value ADR can bring to resolving disputes quickly and at less cost. We need to provide whatever assistance we can to help foster an environment that makes ADR the first option chosen to resolving disputes."

Richard L. Miles, Director, Dispute Resolution Service

The DRS is operational. The Commission has assigned cases to the DRS and several entities have contacted the DRS for help to initiate ADR processes. In these cases, the DRS communicates with the parties about exploring the use of ADR. If an interest exists, the DRS will convene the parties and explain the ADR options available to them. The parties may also select a third party neutral from inside or outside the Commission and define the role the third party neutral will have.

During the convening session, the DRS representative acts as a guide, helps the parties understand the process, gets the process started, and aids in the selection of a third party neutral. While the DRS will not maintain a roster of third party neutrals, it will provide sources of where neutrals can be found, e.g., the Commission's administrative law judges, and the rosters maintained by groups such as the American Arbitration Association and the U.S. Institute for Environmental Conflict Resolution. If the parties choose

a third party neutral other than the DRS representative, the DRS representative will step out of the picture, and the parties' choice will continue the process.

One of the first uses of this approach occurred in a case involving the governance structure of the New England Power Pool (NEPOOL). After rejecting several proposals offered by the 114 member NEPOOL organization for a governance structure that would have the independence necessary for a competitive wholesale electric market, the Commission gave NEPOOL sixty days to come up with an acceptable proposal. It further encouraged NEPOOL to contact its new DRS to help resolve the impasse between the agency and NEPOOL. NEPOOL accepted the offer. The Director of the DRS convened a meeting in Boston and worked with the parties to establish a process designed to produce a governance structure acceptable to the power pool members, other interested parties and the Commission.

The parties agreed to proceed with a mediation process using one of the Commission's administrative law judges, Deputy Chief Judge William J. Cowan, as mediator. Judge Cowan guided the parties through a structured mediation process. In an initial two-day session, he first helped the parties identify common assumptions and principles for a new governance structure. He then divided the members and interested parties into several groups with common interests. Following several meetings with the subgroups, Judge Cowan was able to outline a possible solution. Judge Cowan helped form working groups that focused on discrete issues. Following additional mediation sessions, the members reached a settlement. NEPOOL made the filing on time and the Commission approved the structure that resulted from the settlement process.

The NEPOOL success story was followed with a similar story involving the New York Power Pool. There the parties agreed to use Judge Judith Lee, an Administrative Law Judge with the New York Public Service Commission, as the lead mediator. As with NEPOOL, the mediator played a vital role in bringing the parties to a consensus that led to a Commission-approved settlement. In both cases, the parties were many, the positions were conflicting, and the cases were headed toward costly and time-consuming litigation. These two examples demonstrate that the mediation process can save the parties time and money, help the parties develop their own solution, and lay the foundation for better working relationships in the future.

A recent example of the use of an ADR process in a gas proceeding was Phelps Dodge Corp. v. El Paso Natural Gas Co. In this complaint proceeding, the Commission directed the DRS to convene the parties to initiate discussions on using ADR as a viable tool to resolve the dispute. The parties agreed to use mediation and selected a mediator from the DRS. In September 1999, a one-day mediation session was held with the parties. During the discussions, the parties focused on their business interests and options that would address the expressed interests. By the end of the day, an agreement was reached and potential hearings were avoided. Appellate review of the Commission orders was also avoided. The settlement also resolved another contested proceeding pending before the Commission that had been the subject of numerous protests.

In the Summersville Water Power Project, the National Park Service (NSP) requested the DRS to arrange a meeting with the United States Corps of Engineers, Gauley River Power Partners, L.P., and the

NSP to resolve a dispute involving the construction of facilities at the Summersville Water Power Project. DRS convened the meeting and, at the request of the parties, conducted a mediation process. The mediation efforts of the DRS representative were successful and an agreement was reached. The agreement provides for an equitable resolution of the dispute, accelerates implementation of appropriate mitigation, and avoids costly litigation. The process also enhanced the working relationship among the participants. In a post-evaluation survey, one participant stated that "I know this agreement would not have been possible on our own, without the Service of [DRS]."

The DRS is working on a number of other cases involving a wide variety of issues. The DRS is also working collaboratively with other program offices to help identify cases that are appropriate for dispute resolution.

The DRS has also started "Inreach" and "Outreach" efforts. The objective of these efforts is to champion ADR as the first choice in dispute resolution. The Inreach efforts include educating the Commission staff on the benefits of ADR. As part of its Outreach, the DRS has met, and will meet, with groups to explain what ADR is, why it should be used, how it can be initiated with the help of the DRS, and the benefits a third party neutral brings to the process. For example, it is expected that during any Alternative Licensing Processes used, or even after a license is issued, discrete disputes will occur. Parties are asked to consider the use of ADR when they are unable to negotiate an agreement on their own. If requested, the DRS will assist the parties in identifying and implementing appropriate ADR procedures that could be used to resolve any disputes.

There are many benefits in making the DRS a separate unit. One benefit is an increased ability to work with all program offices. This approach promotes cooperation and a greater awareness that the DRS can help program offices to better achieve their missions.

As part of its goal to expand ADR knowledge throughout the Commission, the DRS plans to invite Commission employees from other offices to apply for a one-year detail to the DRS. While detailed, the employees will receive specialized education and training in ADR theory and practice as well as gain first-hand experience in the practical application of ADR. At the end of the one-year detail, the employee will return to the program offices to apply ADR when appropriate. The DRS will also consider offering internships to students pursuing graduate degrees in ADR and mediation.

The DRS has benefitted from the President's initiative to advance ADR in government proceedings. The Interagency Dispute Resolution Working Group, under the leadership of Peter Steenland from the Department of Justice, provides advice, guidance, information sharing and exposure to "best-ADR practices" through participation in one of the smaller working groups. DRS representatives have attended the Civil Enforcement Section meetings that addressed subjects such as program design, training, identification of neutrals, and systems of evaluation. Each section also makes teams available as consultants to aid in the development of ADR programs. For example, the DRS has consulted frequently with David Batson, an experienced mediator and program advisor from the U.S. Environmental Protection Agency. His insights

and recommendations on program development have aided the DRS in developing a solid foundation for its activities.

The Commission's ADR Specialist as defined in Section 3(b) of the Administrative Dispute Resolution Act of 1990 is also the Director of the Commission's Dispute Resolution Service. The Commission's ADR Specialist represents the Commission with other organizations and fosters cooperative relationships with other federal and state agencies on ADR matters. The Director is charged with providing leadership and vision in designing and implementing a program that promotes, and resolves disputes through the use of, consensual processes. He develops strategic plans to achieve the DRS stated goals. He provides advice and assistance to the Commission and its staff in recommending appropriate cases for ADR application.

"ADR is part of the heart and soul of OALJ. We have top mediators who have settled some of the largest cases in FERC history. We were the first agency to have settlement judges. The ADR services we provide are increasingly being used by participants who have traditionally chosen litigation as the resolution path."

Curtis L. Wagner, Jr., Chief Administrative

The DRS is easily accessible. It has a toll-free number, 1-877-FERC-ADR, and its e-mail address is: ferc.adr@ferc.fed.us.

Measures to Enhance Existing Uses of ADR at the Commission

Settlement Judge Procedures

Under the Commission's regulations, a "settlement judge" is an administrative law judge trained in alternative dispute resolution techniques. The settlement judge consults with the parties and assists them in resolving a dispute instead of using a formal administrative hearing. All judges in the Office of Administrative Law Judges receive training in ADR techniques.

Settlement judge proceedings require the participation of the parties. In order to encourage a free flow of information, the settlement judge is prohibited from discussing the case with the presiding judge, and statements or conduct of the parties at settlement negotiations before the settlement judge are not admissible in later proceedings before the Commission.

Administrative law judges are authorized also to serve as third party neutrals to aid the parties in resolving a controversy. They have performed as mediators and are also available to act as arbitrators. Once an administrative law judge participates as a neutral, he or she is permanently barred from any role in the decisional process involving the same case. Administrative law judges who serve as neutrals do so in their official capacity as federal employees and cannot accept additional compensation of any kind from any participant.

The success rate of FERC administrative law judges serving as neutrals has been extremely high. There are many examples of the successful use of an administrative law judge as a settlement judge or third party neutral. For example, judges were recently effective in mediating settlements involving issues such as: a claim of double billing for transmission charges, the effect on existing power purchasing contracts from the sale of a nuclear plant, a decommissioning fund for a nuclear plant, and the amount of insurance or indemnification required to protect properties adjacent to the construction of a gas storage facility.

It is also easy to request an administrative law judge to serve as a third party neutral. Parties desiring to initiate dispute resolution procedures may either: (1) submit at any time to the Secretary of the Commission, a written proposal, with unanimous consent, to use alternative means of dispute resolution to resolve a matter in controversy before the Commission; or (2) approach the Chief Administrative Law Judge or the DRS to begin the process. If participants desire to use a particular administrative law judge as the settlement judge, they may request that the Chief Judge assign that judge to their proceeding. In addition, on June 9, 1998, the Chief Judge provided for a settlement judge to be available to provide guidance and assistance at all times for "on-call" assistance in any case set for hearing.

Enforcement Hotline

The Enforcement Hotline was formed in 1987 to attempt to resolve complaints informally prior to a formal filing of a complaint. Jurisdictional companies and members of the public may ask the Hotline for help in matters within the Commission's jurisdiction concerning natural gas pipelines, oil pipelines, electric utilities, and hydroelectric projects. Once an informal complaint is made, an attorney in the Enforcement section of the Office of the General Counsel contacts the other party as soon as possible and seeks to help the parties resolve the matter. All discussions are confidential and do not preclude formal action if no resolution is reached.

The attorneys that receive the Hotline calls routinely use facilitation skills to resolve disputes. If appropriate, the attorney will investigate the facts and provide an informal neutral evaluation of the dispute. This latter approach often leads to a resolution of the dispute.

Hotline assistance has ranged from clarifying procedural questions to preventing gas pipeline companies from cutting off transportation service, to helping resolve tariff disputes. Examples of the Hotline's calls include the successful resolution of 40 landowner complaints against one pipeline and an additional 20 complaints against another pipeline without litigation or additional costs to the landowners. The disputes concerned such issues as the need to regrade and reseed areas of a right-of-way to eliminate erosion, the restoration of driveways or other property damaged during construction, and the restoration of natural springs and wells used for agricultural and domestic consumption. For each complaint, the Hotline staff worked with the landowners and the pipeline to resolve each problem to the satisfaction of both parties.

Today, the Enforcement Hotline is more active than it ever has been. In FY 1999, the Hotline addressed 310 electric calls, 252 gas calls, 7 oil calls, 42 hydro calls, and 16 miscellaneous calls. To

encourage the use of the Hotline, the Commission provides a toll free telephone number, 1-877-303-4340.

Cases Set for Administrative Litigation

The Commission's trial staff, located in the newly-formed Office of Administrative Litigation (OAL), participates in cases set for administrative hearing and serves two roles. First, it advocates positions for the "public interest." The public interest is manifested in the policy and precedent of the Commission and is developed by the trial staff in on-the-record proceedings. Second, trial staff actively encourages settlement in most cases and routinely explores ADR techniques.

In cases set for hearing, parties are permitted to conduct extensive discovery and file at least two sets of testimony. Historically, cases can take from several months to a number of years to be resolved. OAL has as one of its goals to increase the number of cases that settle through consensual resolution processes. OAL is also introducing to the parties the option of using ADR in selected cases. To aid in accomplishing this goal, OAL has added to its staff an ADR specialist. OAL is also providing basic ADR training to its entire staff. OAL hosted an ADR Symposium in which leaders in federal ADR use discussed how to initiate an ADR process, what to expect, how to close the process, and told stories to illustrate how ADR can be used successfully in cases set for litigation.

"The Commission's litigation staff has always vigorously pursued the settlement of its cases. It has a proven success rate of over 75%. The application of ADR techniques will add additional valuable tools to OAL and the parties' efforts to consensually resolve their disputes. The increased use of ADR should help us all resolve our cases faster, cheaper and more satisfactorily for all concerned."

Virginia Strasser, Director, Office of

Over the years, approximately 70 to 80 percent of all cases set for hearing have settled through unassisted negotiations. At times, staff has persisted in the pursuit of the use of ADR when facilitation attempts have failed. For example, a complex, multi-party gas pipeline proceeding started out with a proposal to recover more than \$153 million in gas costs incurred by a pipeline company. After a technical conference, a hearing, unassisted settlement discussions, consolidations with other filings seeking recovery of additional millions in gas supply costs, an ADR mini-trial, and facilitated settlement discussions by the trial staff, the parties were still at an impasse. Trial staff persisted in encouraging the parties to use an ADR process, and the parties ultimately agreed to use settlement judge proceedings led by the Commission's Chief Judge. This process resulted in more than 40 parties reaching a settlement. The settlement resolved a total of 34 Commission docketed proceedings and 39 cases on appeal before the D.C. Circuit Court, and limited the issues to be addressed in seven other appeals. Were it not for the Commission staff's effort to pursue the use of ADR techniques, it is unlikely that this case would have settled.

Another example of how trial staff initiated an ADR process occurred in the Duquesne v. Pitcairn stranded cost proceeding. In 1997, Duquesne filed to recover stranded costs from Pitcairn, a small borough which had announced an intention to find a new supplier. The case was set for hearing. Trial staff's initial attempts to facilitate negotiations between the two parties were unsuccessful. Staff continued to meet with the parties, however, and recommended the use of an ADR process. The parties subsequently agreed to use binding arbitration. As a result, the arbitrator was able to issue a decision that was filed with and approved by the Commission. Absent ADR, this case would have taken years to complete and would have involved substantial costs and resources.

The OAL recently settled a case through a modified ADR approach during the discovery phase. The case involved a pipeline that had been under investigation for environmental violations for many years. The pipeline, its customers and a number of State agencies agreed to a streamlined discovery process. In lieu of full blown discovery, the parties agreed that the company would make a presentation of its evidentiary case, strengths and weaknesses, and then conduct a question and answer session on the facts. This laid the foundation for the parties to settle three contested matters in a single global agreement. This process saved months of discovery battles, and avoided protracted administrative litigation and potential court appeals.

Streamlined Complaint Procedures

In FY 1999, the Commission issued Order No. 602 that revised its procedures for handling complaints. Order No. 602 encourages and supports the consensual resolution of complaints and recommends ADR as one of the preferred resolution paths. To advance this objective, complainants are now required to state: (1) whether the parties have used the Enforcement Hotline, the Dispute Resolution Service, tariff-based dispute resolution mechanisms, or other informal dispute resolution procedures, and, if not, why these procedures were not used; (2) whether the complainant believes that alternative dispute resolution under the Commission's supervision could successfully resolve the complaint; (3) which types of ADR procedures could be used; and (4) whether there is any process on which the parties have agreed for resolving the complaint.

Parties desiring to initiate dispute resolution procedures may at any time submit to the Secretary of the Commission a written proposal, with unanimous consent, to use alternative means of dispute resolution to resolve a matter in controversy before the Commission. Order No. 602 also states that the DRS will work with all those interested in Commission activities to increase awareness and the use of ADR. The order adds that the DRS or the Hotline can be used to aid in the informal resolution of disputes before a complaint is filed.

Final Thoughts

The Interagency Dispute Resolution Working Group may want to consider initiating a new effort dedicated to expanding the use of ADR by agencies that act as impartial arbiters of conflicting interests that arise rather than as a negotiating party to the dispute. The Commission staff would appreciate having such a forum to explore opportunities to resolve these types of disputes through alternative means of dispute

resolution. The Commission staff would welcome working with the Interagency Dispute Resolution Working Group in addressing this area.

REPORT TO THE PRESIDENT ON AGENCY ADR ACTIVITIES

Agency: Federal Housing Finance Board

Agency Dispute Resolution Specialist:

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ADR Dispute Resolution Specialist Contact:

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The Federal Housing Finance Board

The Federal Housing Finance Board (Finance Board) is a small (122 employees), independent agency in the executive branch of the United States government, which was created by Congress in 1989 to supervise the Federal Home Loan Bank System (Bank System). *See generally* Federal Home Loan Bank Act, as amended, 12 U.S.C. §§ 1421 *et seq.*, (Bank Act); *see, e.g., Id.* § 1422a(a). The Bank System consists of the twelve Federal Home Loan Banks (Banks) and the Office of Finance, a joint office of the Banks. *See id.* § 1422b(b)(2); 12 CFR 941.1. The Banks are government-sponsored enterprises that serve as a central credit facility for the nation's financial institutions to facilitate housing finance and targeted economic development. The primary duty of the Finance Board is to "ensure that the [Banks] operate in a financially safe and sound manner." *See id.* § 1422a(a)(3)(A). Consistent with that principal duty, the Finance Board also must supervise the Banks, ensure that the Banks carry out their housing finance mission, and ensure that the Banks remain adequately capitalized and able to raise funds in the capital markets. *See id.* § 1422a(a)(3)(B). The Finance Board is authorized to promulgate and enforce such regulations and orders as are necessary from time to time to carry out the provisions of [the Federal Home Loan Bank Act], "and, to "suspend or remove for cause a director, officer, employee, or agent of any [Bank or joint office]." *See id.* §§ 1422b(a)(1) and (2).

Examination Powers

The Office of Supervision, staffed by approximately twelve examiners, examines the Banks (and the Office of Finance) at least annually to ensure that they operate in a safe and sound manner, carry out their housing and community development finance mission, and are in compliance with applicable statutes and regulations, as well as Finance Board policies and orders. *See id.* § 1440; *see also* 12 CFR 900.14. Finance Board examiners have the same "powers and privileges" as are vested by law in examiners under the National Bank Act and the Federal Reserve Act, and are subject to the "same requirements, responsibilities, and penalties" as are applicable to such examiners. *See id.* § 1440.

Thus, Finance Board examiners have the power to make a "thorough examination of all the affairs" of a Bank and its affiliates, and "to administer oaths and to examine any of the officers and agents thereof under oath. . . ." *See id.* § 481.

Disputed Supervisory Determinations

Pursuant to the Finance Board's authority to examine the Banks and issue "orders," the Office of Supervision from time to time may issue examination findings or "supervisory determinations" to a Bank to address possible non-compliance issues. The Finance Board has promulgated procedures for the Banks to obtain review of disputed examination findings and other supervisory determinations (Review Procedures). *See* 64 Fed. Reg. 30880 (June 9, 1999). Informal resolution of disputed examination findings is encouraged. The Office of Supervision coordinates such discussions directly with the Banks. While encouraging the informal resolution of such disputes at the staff level, the Review Procedures permit a Bank to submit a petition to obtain review of the matter by the Board of Directors of the Finance Board (Board of Directors). The Review Procedures provide that once a petition is filed, the Board of Directors must review any subsequent settlement of the matter. Settlements are encouraged. The Review Procedures also permit interested parties to intervene in petitions under applicable guidelines. The Review Procedures provide for fair and prompt review of disputed supervisory determinations. Preliminary examination results and formal enforcement-related actions are excluded from the definition of disputed supervisory determinations.

To date, only one petition for review of a disputed supervisory determination has been filed with the agency, and it was resolved by a settlement in accordance with the Review Procedures. The Finance Board does not have a separate alternative dispute resolution (ADR) program supporting the examination function, there has been insufficient volume to justify the development of a separate program. The Review Procedures adopted by the Board of Directors of the Finance Board were designed in part to incorporate certain intrinsic ADR principles and provide a meaningful alternative to civil litigation for the resolution of disputed supervisory issues.

New Enforcement Powers

Pursuant to Title 6 of the Gramm-Leach-Bliley Act of 1999, the "Federal Home Loan Bank System Modernization Act of 1999," (Pub. L. 106-102), the Finance Board has been granted the authority to issue subpoenas, notice of charges, cease and desist orders, and civil money penalty orders. Section 606(e) of the Modernization Act amends section 2B(a) of the Bank Act to incorporate the powers granted to the Office of Federal Housing Enterprise Oversight ("OFHEO") with respect to Fannie Mae and Freddie Mac under the Federal Housing Enterprises Financial Safety and Soundness Act of 1992. Thus, the Finance Board now has the same authority to issue corrective orders as the federal banking agencies have with respect to insured depository institutions, and all other powers to enforce the Bank Act that OFHEO has to enforce its statutes, *i.e.*, including the authority to issue temporary orders to cease and desist and orders imposing civil money penalties. Implementing procedures will be developed and existing procedures will be reviewed. At that time, the Finance Board will also consider publishing an ADR policy statement.

Litigation

As previously discussed, the Finance Board does not have the type or volume of cases to justify the development of a separate ADR function or program. Currently, the Finance Board is involved in one lawsuit that involves a question of statutory authority under the Administrative Procedure Act, and one contract dispute. Neither of these cases involves issues appropriate for resolution under ADR.

Does your agency have an ADR policy statement?

Not at the present, as stated above and in previous reports, staff continues to evaluate the need for an agency ADR policy and will make a proposal to the General Counsel at the appropriate time.

What is your agency's ADR budget?

If you do not have a budget, how are your ADR activities funded? As stated above, the Finance Board has addressed ADR in the context of policies and procedures developed for specific operational divisions. The Office of General Counsel provides the support for this activity, which is funded under the OGC annual budget.

How many FTE's does your agency dedicate to ADR? If none, how are your ADR activities staffed?

As stated above, the Finance Board is a small independent agency, staffed by approximately 122 employees. The Office of General Counsel is the responsible office for ADR programs and projects. The General Counsel assigns ADR-related projects to OGC staff on an as needed basis, taking into account OGC staffing levels and workload, as well as the recommendations of the Deputy General Counsel having responsibility for agency administrative affairs. The General Counsel personally directs and reviews each ADR-related project, in close consultation with the Finance Board's Managing Director.

What programs has your agency established during FY 1999 pursuant to the Administrative Resolution Act and the President's directive to promote greater use of ADR?

The Finance Board is in full compliance with the Act and the President's directive. As stated above, the Finance Board is implementing the Act and the President's directive by designing new procedures and reviewing existing procedures to integrate, as appropriate, the principles of conflict management systems design.

What ADR programs has your agency expanded or improved during FY 1999?

In addition to the publication of the Review Procedures, as revised, the Finance Board promulgated additional procedures (*see* 64 Fed. Reg. 30880 (June 9, 1999)) designed to provide standardized access

to the agency's decision-making processes. These additional procedures provide the Banks and other interested parties with a wider array of approaches to avoid or resolve regulatory disputes.

What benefits has your agency received from these programs?

The procedures adopted by the Finance Board facilitate preventative methods of ADR that can provide for the timely resolution of issues at a level in the agency organizational structure that ultimately may result in cost-savings for the agency.

What ADR success stories does your agency have to share with the President?

No regulatory disputes raised by any of the Banks have escalated to litigation. The Finance Board redesigned its existing systems and revised procedures to build in new interest-based options such as the "loop-back" provision in the Review Procedures which permit the parties to return to the lower-cost method of a negotiated settlement.

What are your agency's goals, including resources necessary for the future?

The Finance Board will continue to evaluate and revise organizational structures and design administrative systems that make the best use of conflict management systems, stressing, to the extent practicable, preventive and negotiated methods of ADR.

REPORT TO THE PRESIDENT ON AGENCY ADR ACTIVITIES

Agency name: Federal Labor Relations Authority (FLRA)

Agency Dispute Resolution Specialist and other ADR points of contact:

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Collaboration and Alternative Dispute Resolution Program (CADR)
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Patty Reilly
Director of External Affairs
(202) 482-6500
preilly@flra.gov

Does your agency have an ADR policy statement?

Yes. ADR is such an integral part of the FLRA's activities that it is included in our mission statement:

The FLRA exercises leadership under the Federal Service Labor-Management Statute to promote stable, constructive labor-relations that contribute to a more effective government.

The FLRA fulfills its mission by:

....providing high quality training and education programs, and *furnishing effective intervention services* (emphasis supplied).

Supporting our mission statement are four broad strategic goals. Goal Two, which is applicable agency-wide requires staff:

To effectively use and promote alternative methods of dispute resolution and avoidance to reduce the costs of conflict in the Federal labor-management relations community.

What is your agency's ADR budget? If you do not have a budget, how are your ADR activities funded?

The FLRA's ADR program is not a program "off to the side" but rather, an integral part of the Agency's mission. We have "mainstreamed" Alternative Dispute Resolution, incorporating it into virtually every stage of proceedings at the FLRA. Our ADR program affords parties opportunities to resolve their own problems, on their own terms, through an interest-based approach, at the earliest possible time. As previously noted, this is a specific Agency goal and programmatic employees' work plans are designed to support that goal.

How many FTEs does your agency dedicate to ADR?

The FLRA's four-person Collaboration and Alternative Dispute Resolution (CADR) Office coordinates ADR activities in all components of the FLRA. The ADR services are carried out by employees at all levels and throughout all three components (the Authority, the Office of the General Counsel and the Federal Service Impasses Panel) of the Agency. Approximately 120 Agency employees are involved in assisting parties in resolving disputes on their own terms at stages of the process.

What ADR programs has your agency established during FY 1999 pursuant to the Administrative Dispute Resolution Act and the President's directive to promote greater use of ADR?

See below. The FLRA has actively promoted alternative dispute resolution through the activities of its three components for many years. In 1996, the cross-component CADR Office was created and ADR activities have since been coordinated through it. The program has been strategically expanded in the ensuing years.

What ADR programs has your agency expanded or improved during FY 1999?

Our 1999 initiatives have built on our earlier activities, including establishing the cross-component CADR Office and reinventing case processes for Unfair Labor Practice (ULP) cases and representation cases. The CADR Office offers a wide array of services including facilitation, interventions, education, and training to agencies and unions --literally the fundamentals of ADR. The revised litigation ULP process includes a "Settlement Judge" program to encourage parties to resolve their differences well in advance of trial; a mandatory prehearing conference so that parties can narrow and sharpen legal issues between them; and discovery so that litigation is the product of information rather than surprise. The revised representation process similarly requires parties to discuss their differences and seek possible resolutions at various stages of the proceedings.

In 1999 two expansions were made. In January 1999 the ULP investigatory process was revamped to facilitate dispute resolution and simplify, clarify, and improve the processing of ULP charges. The regulations codify ADR and provide for settlement discussions and conferences. Also in 1999 the FLRA's negotiability appeals process was revised. A significant change from the previous "legal paper" process is the new requirement that parties participate together in a conference in order to discuss, narrow, and clarify issues to be resolved. Preliminary results under this new negotiability process indicates that about one-third of the cases not dismissed on procedural grounds, settle. Even in instances where the cases don't settle, the legal issues are refined as a result of the parties' discussions.

What benefits has your agency received from these programs?

By assisting parties to resolve disputes at the earliest possible time, FLRA staff and parties save time and resources that would otherwise be expended on litigation. Because those cases with problems that can

be resolved without further litigation settle, the cases adjudicated by the Authority tend to be about legal issues (rather than problematic relationships). Issues in those cases have been narrowed and sharpened by the parties through discussions. As a result, parties also benefit from clearer decisions.

The benefits of ADR also accrue to the Federal employees covered by the Federal labor-relations program. With improved labor-management relationships, and fewer resources spent on litigating workplace conflicts, Federal employees spend more time fulfilling the missions of their Federal agencies. Also, training in collaborative problem solving improves how employees carry out these responsibilities. In turn, all taxpayers benefit when Federal agencies can quickly resolve workplace disputes, are not required to divest resources to protracted litigation, and, in general, can more effectively accomplish their missions.

What ADR success stories does your agency have to share with the President?

The FLRA's ADR program has many success stories. The most pronounced of these result from our revised ULP process.

ULP cases are the FLRA's largest category of cases. Traditionally, ULP charges are investigated by the Office of the General Counsel. If warranted, complaints are issued and are prosecuted in trials before administrative law judges, whose recommended decisions are subject to appeal and final decision-making by the Authority.

Through our revised process that incorporates ADR, we have seen two significant changes. First, the number of charges filed has fallen sharply --from 8,764 charges in 1993, to just 5,686 charges in 1999. A number of factors have contributed to this decline, including our ADR process that encourages agencies and unions to resolve problems even before a charge is filed, and provides for interventions and outreach.

Second, even in instances where charges are not resolved and complaints are issued, cases referred for trial are settling as a result of ADR. For example, in 1993 12.4 percent of all complaints went to trial. In 1999, just 9.2 percent of complaints went to trial. Most important, the number of expensive, last minute "courthouse steps" settlements (settlements reached immediately prior to hearing after virtually every possible litigation expenditure has been) have also declined as parties use our assistance to settle their cases earlier in the process. In Fiscal Year 1999, these more costly late settlements were just 1.9 percent of all settlements, down from a high of 15 percent in 1996 (the first full year of the Settlement Judge program).

In sum, our ADR success story is that ADR is contributing to fewer charges, and leading to a lower percentage of trials and a higher percentage of cases settling earlier in the process.

What are your agency's ADR goals, including resources necessary for the future?

As noted in our response to question one, ADR is part of the FLRA's mission statement and strategic goals. ADR activities are required in the performance work plan of more than 120 of our employees. Consequently, the FLRA will continue to integrate ADR into all of its programmatic activities in the coming years.

REPORT TO THE PRESIDENT ON AGENCY ADR ACTIVITIES

Agency name: Federal Maritime Commission

Agency Dispute Resolution Specialist: Name: Bryant L. VanBrakle
Phone: 202-523-5725
Email address: Bryant@FMC.GOV

Other ADR points of contact: Name: Ronald D. Murphy
Phone: 202-523-5725
Email address: Ronaldm@FMC.GOV

Does your agency have an ADR policy statement?

Yes, the Commission has issued a specific ADR policy statement. Additionally, the effective use of ADR is specifically reflected in the agency's Annual Performance Plan, and is emphasized in periodic meetings and assessments of performance.

What is your agency's ADR budget?

The Commission is a small agency of 135 people, with a budget of barely \$14 million. Several years of severe budgetary constraints have precluded us from establishing a specific ADR budget. Nonetheless, resources and attention definitely are dedicated to ADR efforts.

If you do not have a budget, how are your ADR activities funded?

ADR funding is included in the general funding for the agency's program activities, much like other areas, e.g., ethics, FOIA, press relations, etc. Again, our small size and reduced budgets necessitate this approach.

How many FTE's does your agency dedicate to ADR?

No Commission employees are tasked solely with ADR responsibilities/functions. As indicated in the following answer, those involved in ADR activities do so as a collateral duty.

If none, how are your ADR activities staffed?

ADR activities are collateral functions of various agency personnel, and are staffed through several of our programs. Administrative Law Judges focus on ADR principles in all formal complaint proceedings. It also is standard Commission policy for our enforcement personnel to attempt informal resolution of all malpractices and statutory violations uncovered via our investigative and monitoring efforts. And, our ombudsman plays a key role in assisting opposing parties to achieve informal resolution of informal complaints covering a wide range of disputes. Finally, all program staff are cognizant of the Commission's objective to implement ADR efforts whenever possible; accordingly, when dealing with contested issues or disputes, they attempt to lead the involved parties in that direction.

What programs has your agency established during FY 1999 pursuant to the Administrative Dispute Resolution Act and the President's directive to promote greater use of ADR?

While the Commission did not establish any new programs in FY 1999, we did place increased emphasis on the availability of the Commission's ADR resources to resolve disputes and enforcement issues. As aforementioned, our Annual Performance Plan reflects this objective, and it consistently is reinforced with involved staff.

What ADR programs has your agency expanded or improved during FY 1999?

In an effort to make more effective use of limited staff resources, the Commission encouraged litigants in complaint proceedings and the Commission enforcement staff to make increased use of the Commission's ADR resources. As indicated below, this effort has contributed to an increase in the number of formal settlements and compromise agreements and greater utilization of our informal complaint procedures. Additionally, in an effort to avoid formal investigations and enforcement proceedings, the Commission has placed an even greater focus on compliance over enforcement, and has devoted a good deal of effort to assisting small businesses to comply with applicable laws and regulations.

What benefits has your agency received from these programs?

ADR initiatives led to: more efficient utilization of limited resources; expediting the disposition of complaint cases; and, more efficient oversight of the ocean shipping industry.

What ADR success stories does your agency have to share with the President?

The use of ADR had resulted in an increase (from 5 to 8) in the number of settlements in formal proceedings between FY 98 and FY 99 and an increase in the number of compromise agreements involving shipping statute violations from 38 to 40. In addition, the Commission's informal complaint procedures have been utilized by over 400 individuals or companies resulting in recoveries totaling approximately \$200,000. These informal procedures have resulted in significant recoveries without the parties incurring the expense or burden of formal litigation procedures.

What are your agency's ADR goals, including resources necessary for the future?

Our ADR goals for the future are to: 1) increase our emphasis on ADR efforts and factor ADR directly into a planned agency reorganization/restructuring; 2) improve the effectiveness of our ADR activities; and 3) fully and appropriately comply with EEOC Directive 110 concerning the use of ADR for EEO complaint procedures.

REPORT TO THE PRESIDENT ON AGENCY ADR ACTIVITIES

Agency name: Federal Mediation & Conciliation Service

Agency Dispute Resolution Specialist & other points of contact:

Name: Richard Giacalone

Telephone: 202-606-5445

Email: RGiacalone@FMCS.gov

Does your agency have an ADR policy statement? Yes_* ____ No ____

What is your agency's ADR budget? : N/A

If you do not have a budget, how are your ADR activities funded? :

Interagency Agreements

How many FTE's does your agency dedicate to ADR ? : 6

What programs has your agency established during FY 1999 pursuant to the Administrative Dispute Resolution Act & the President's directive to promote greater use of ADR? :

Creation of the FMCS Institute that offers Conflict management & resolution courses.

What ADR programs has your agency expanded or improved during FY 1999?

The department of International & Dispute Resolution Services.

What benefits has your agency received from these programs?:

Understanding of government agency needs & trends in conflict managing.

What ADR success stories does your agency have to share with the President?:

FMCS is involved every day in fact finding, mediation, facilitation & arbitration of work place disputes, collective bargaining contract negotiations, designing of ADR systems for public & private organizations, training & mentoring employees in the art of managing & resolving disputes and evaluating ADR programs for their effectiveness. Of particular note is our mediation/facilitation assistance to federal agencies in the negotiated rule making process. Departments such as Interior (BIA), Transportation, Labor and HUD have benefitted from our team of federal mediators providing neutral services to their multi-party negotiations. Among these processes has been our concentrated work with Native American Indian issues, such as Indian Gaming and Indian Reservation Roads (TEA 21) rule making.

What are your agency's ADR goals, including resources necessary for the future?:

Our goals concentrate on enhancing the ADR Institute as well as securing international projects in troubled areas that seek our assistance. Regarding resources, we hope to generate greater levels of funding through interagency agreements to pay for additional FTE as needed.

REPORT TO THE PRESIDENT ON AGENCY ADR ACTIVITIES

Agency name: Federal Mine Safety and Health Review Commission

Dispute Resolution Specialist and Point of Contact:

Norman Gleichman, 202-653-5610, ngleichman@fmshrc.gov

Does FMSHRC have an ADR policy statement? YES.

What is FMSHRC's ADR budget. 0.

If you do not have a budget, how are your ADR activities funded?

When implemented, ADR activities will be part of the Commission's adjudicative process and funded from its trial determinations activities.

How many FTEs does FMSHRC dedicate to ADR? 0

If none, how are your ADR activities staffed?

When implemented, ADR activities will be assigned to and staffed by the Commission's existing corps of Administrative Law Judges.

What programs has your agency established during FY 1999 pursuant to the ADR Act and the President's directive to promote greater use of ADR?

During the fiscal year, the Commission, a purely adjudicative agency that resolves contested enforcement actions and claims of discrimination under the Federal Mine Safety and Health Act of 1977, began the process of promulgating a rule of procedure providing for "settlement judges" to serve as mediators to resolve disputes under the Commission's jurisdiction before they come to a full hearing. The drafting team met with ALJs from other agencies, and reviewed other agency rules providing for a settlement judge procedure. Commissioners recently approved a notice of proposed rulemaking, which has been forwarded to the Federal Register for publication. The proposed rules provide that the parties may request appointment of a settlement judge, or the Chief Judge may assign a case to a settlement judge. In either case, tight deadlines for settlement are imposed, and, if settlement is not achieved, the case is assigned to another ALJ for hearing and disposition. The proposed rule further provides for extensive confidentiality protections, and permits the settlement judge to meet separately with the parties in an effort to reach a settlement of the dispute. The Commission will begin training ALJs in mediation techniques in conjunction with implementing this rule. The rule is being proposed for a two-year trial period.

What benefits has your agency received from these programs?

The program has not yet gone into effect.

What ADR success stories does your agency have to share with the President?

The formal ADR program has not yet gone into effect.

What are your agency's ADR goals, including resources necessary for the future?

We hope to issue our final rule no later than the spring of 2000, train our ALJs in mediation and settlement techniques, collect data during the trial period, and rapidly dispose of cases outside of the litigation framework. As noted above, we anticipate funding and staffing ADR in the future through existing budgeted activities.

REPORT TO THE PRESIDENT ON AGENCY ADR ACTIVITIES

Name of agency or bureau: Federal Trade Commission (“FTC” or “Commission”)

Agency Dispute Resolution Specialist: James Giffin
Assistant General Counsel for Legal Counsel
Office of the General Counsel
Federal Trade Commission
600 Pennsylvania Ave., N.W.
Washington, D.C. 20580
Phone Number: 202-326-2209
E-mail Address: jgiffin@ftc.gov

Other ADR Contacts: Jill Coleman
Attorney
Office of the General Counsel
Federal Trade Commission
600 Pennsylvania Ave., N.W.
Washington, D.C. 20580
Phone Number: 202-326-2524
E-mail Address: jcoleman@ftc.gov

Barbara Wiggs
EEO Director
Equal Employment Opportunity Office
Federal Trade Commission
600 Pennsylvania Ave., N.W.
Washington, D.C. 20580
Phone Number: 202-326-2196
E-mail Address: bwiggs@ftc.gov

Steven Besner
Assistant Director
Human Resources Management Office
Federal Trade Commission
600 Pennsylvania Ave., N.W.
Washington, D.C. 20580
Phone Number: 202-326-2358
E-mail Address: sbesner@ftc.gov

Does your agency have an ADR policy statement?

For several years, the FTC has had mediation policies for workplace dispute resolution that are integrated in the Commission's Administrative Manual Chapters on Human Resource Management and Equal Employment Opportunity. This past year, the FTC Office of the General Counsel launched significant agency-wide efforts to establish a framework for adopting a new general policy statement governing the use of ADR. Within this framework, the most visible agency accomplishments this year are that the FTC has explored new applications for ADR and has set the stage for integrating ADR strategies in its mission-related responsibilities to enforce several federal antitrust and consumer protection laws. Additionally, the FTC has established an ADR Task Force consisting of 10 staff members to study and evaluate the utility of ADR mechanisms in the Commission's enforcement matters. Particular emphasis has been placed on identifying categories of antitrust and consumer protection enforcement cases suitable for ADR techniques. The FTC's goal is to expand ADR applications to fit the unique needs of the Commission in resolving civil enforcement matters in a fair, timely and efficient manner. Further, to facilitate the process of marketing the value of ADR strategies, the Commission's ADR Task Force members have actively participated in the Interagency ADR Working Group ("IADRWG") and two of its component sections. Collectively, these efforts have strengthened the commitment within the FTC for moving closer to having a general ADR policy for the agency.

What is your agency's ADR budget? If you do not have a budget, how are your ADR activities funded?

The FTC has no separate budget line item for ADR. However, as the agency refines its existing ADR programs for workplace disputes and puts new mission-related initiatives in place, the agency will identify the need for a specific ADR budget.

To meet the current dispute resolution needs of the FTC, ADR-related activities regarding workplace and employment issues are currently funded by the FTC's Human Resource Management Office ("HRMO") or the office or division in which the personnel participating in such activities are located. In particular, HRMO (which is responsible for administering the Commission's training programs), utilizes the agency's training budget to fund ADR training and individual mediation sessions. Further, expenses associated with court-mandated ADR proceedings are handled by the particular FTC office responsible for the litigation. The FTC contracts with ADR professionals to provide mediation and other ADR services.

How many FTE's does your agency dedicate to ADR? If none, how are your ADR activities staffed?

The FTC has not identified a specific need for dedicating FTE's to ADR. ADR activities regarding workplace dispute resolution are currently staffed by personnel in HRMO, the Office of Equal Employment Opportunity ("EEO"), and on occasion, the Office of the General Counsel. Further, the FTC's efforts to promote the use of ADR in the civil enforcement arena have been carried out by

agency staff, primarily attorneys, from the Office of the General Counsel and the agency's two enforcement bureaus, the Bureau of Consumer Protection and the Bureau of Competition. Together, these staff members have formed the previously-mentioned ADR Task Force and have performed their ADR-related activities as a component of their general legal responsibilities.

What programs has your agency established during FY 1999 pursuant to the Administrative Dispute Resolution Act and the President's directive to promote greater use of ADR?

The FTC has participated extensively in the work of the IADRWG. Several FTC attorneys from the Office of the General Counsel and its two enforcement bureaus are active members of the Civil Enforcement Section ("CES") of the IADRWG, having participated in numerous training activities and presentations throughout the fiscal year and assisted in preparing the year-end CES report.

In addition, on a regular basis, staff of the Office of General Counsel, HRMO and EEO attended training sessions sponsored by the Federal Workplace Disputes Section of the IADRWG and the Small Agency Caucus. Through its participation in these interagency groups, the FTC made significant strides in fulfilling the agency's commitment to ADR.

With respect to specific programs instituted, in the challenging area of civil enforcement, the FTC has moved from having no specific ADR program for its antitrust and consumer protection missions to having a multipart plan to promote the development and implementation of ADR. Perhaps the most notable Commission accomplishment in civil enforcement was the formation of an ADR Task Force consisting of attorneys from the agency's enforcement bureaus and the Office of the General Counsel. Many of the ADR Task Force members also serve as FTC representatives to the CES.

During FY 1999, the ADR Task Force: (1) surveyed FTC staff attorneys in headquarters and regional offices regarding their past experiences with ADR; (2) made presentations to senior agency officials to obtain support and guidance in developing an ADR pilot program for consumer protection and antitrust cases; (3) began to develop case selection criteria to identify appropriate enforcement cases for ADR; and (4) planned training opportunities for enforcement staff. On several occasions, the Task Force met with ADR professionals with the Department of Justice ("DOJ"), Environmental Protection Agency ("EPA") and the Securities and Exchange Commission ("SEC"), as part of the CES's Consultation Team effort, to obtain advice in building an ADR program that is consistent with and advances the agency's enforcement initiatives. Further, through the DOJ Office of Dispute Resolution, the Task Force has arranged for and is helping to design ADR-related training for the FTC's high level managers and litigators for January 2000. Finally, senior FTC managers in the Bureau of Consumer Protection and the Bureau of Competition have signaled to the Task Force their interest in exploring the use of ADR to resolve enforcement disputes through the development of a pilot ADR program during FY 2000.

What ADR programs has your agency expanded or improved during FY 1999?

As mentioned previously, the FTC has operated successful mediation programs to handle employee grievances and EEO complaints. These ADR programs, administered by the Directors of the Office of EEO and HRMO, have been in place for five years. Although the FTC has already achieved very high levels of resolution and employee satisfaction with these programs, the agency is working to broaden their impact. Specifically, during FY 1999, the FTC focused on three main goals for these programs: (1) expanding the use of ADR for resolving workplace issues; (2) creating incentives for maintaining the success of our dispute resolution programs; and (3) increasing employee and manager support for these programs.

In working toward these goals, FTC staff began the fiscal year by participating in several training sessions sponsored by the IADRWG Federal Workplace Disputes Section and the Small Agency Caucus. Inspired by these interagency activities, the FTC staff began its own evaluation of potential areas of improvement for the agency's workplace dispute resolution programs. This evaluation resulted in development of a survey that will be used to obtain feedback from Commission personnel who participate in mediation sessions as well as an informational brochure to promote the agency's mediation programs. This brochure, when completed, will be distributed to all FTC employees and will be accessible through the FTC Intranet. Plans are also underway for expanding the use of ADR processes to a wider variety of employment-related issues and creating incentives for FTC managers and supervisors to support early and frequent use of ADR. Also, this year the FTC continued to emphasize the importance of ADR training, and has provided training for staff so that they may participate directly in the resolution of agency employment disputes and serve as members of the Interagency Shared Neutrals Program.

What benefits has your agency received from these programs?

The FTC's ADR activities have led to improvements in the existing ADR program for workplace disputes, as described above. In addition, a significant benefit has been the FTC staff's opportunity to network with other small agencies who face similar workplace and civil enforcement issues as they explore ADR. Also, the FTC has taken advantage of mentoring and counseling opportunities provided by agencies with established ADR programs, especially the DOJ, EPA and SEC. These opportunities have greatly facilitated the FTC ADR Task Force's effort to promote the use of ADR, develop an ADR training program, and explore the creation of an ADR pilot program for FTC enforcement cases.

What ADR success stories does your agency have to share with the President?

The FTC's most significant ADR achievements in the past year have been our commitment to promote the use of ADR for its civil enforcement cases and the creation of an ADR Task Force to coordinate the agency's ADR activities. This Task Force has worked cooperatively across FTC organizations to create a foundation for realizing the agency's goal of establishing a new ADR program for civil enforcement cases, including, among other things, developing case selection criteria for enforcement cases and preparing a training program for FTC managers and litigators. These efforts may lead to the

creation of a pilot ADR program for civil enforcement during FY 2000. Also, the Commission continues to achieve outstanding results through its mediation programs for workplace and EEO disputes, and has worked to enhance these programs by incorporating new ADR marketing and evaluation techniques.

What are your agency's ADR goals, including resources necessary for the future?

The FTC's goals are to continue its efforts to develop a civil enforcement ADR program and to further enhance its workplace dispute resolution programs. In the near term, the Commission intends to provide ADR training for managers, litigation supervisors, and key enforcement staffers through the DOJ Office of Dispute Resolution and to commit significant resources to marketing its workplace ADR programs to employees and managers. The ADR Task Force will also develop case selection criteria and continue to consult with ADR practitioners from DOJ, EPA, and SEC regarding the most effective method of developing an ADR program.

In the long run, the FTC would like to launch an ADR pilot program for appropriate categories of civil enforcement cases and to provide ADR training opportunities for the entire Commission enforcement staff. To accomplish these objectives, the Commission could benefit from dedicated ADR funding and continued assistance and support from the IADRWG and its participating agencies.

REPORT TO THE PRESIDENT ON AGENCY ADR ACTIVITIES

Agency: General Accounting Office

Agency Dispute Resolution Specialist and other ADR points of contact:

ADR Specialist:	ADR Point of Contact
Name: Dolores H. Crawford	Daniel I. Gordon
Telephone: (202) 512-4715	(202) 512-8219
Email: crawfordd.sup@gao.gov	gordond.ogc@gao.gov

Does your agency have an ADR policy statement? Yes ☒ No ☐

With regard to GAO's discrimination complaint process, GAO Order 2713.2, "Discrimination Complaint Process," Chapter 1, Paragraph 5 c. states: "Consistent with section 118 of the Civil Rights Act of 1991, GAO shall encourage the use of alternative dispute resolution approaches in the discrimination complaint process". In addition, the order promotes use of ADR for "any work related concerns or difficulties" not only when discrimination is at issue.

With regard to GAO's bid protest function, GAO regulations at 4 C.F.R. § 21.10(e) and (f) advise protest parties that GAO may use "flexible alternative procedures to promptly and fairly resolve a protest," including the possibility of "status and other conferences."

What is your agency's ADR budget?

If you do not have a budget, how are your ADR activities funded?

The agency does not separately budget for ADR activities. ADR activities are viewed as routine aspects of resolving workplace disputes and our bid protest function. It should be noted, however, that the agency spent approximately \$15,000.00 during fiscal year 1999 in order to provide mediation training to managers and the general workforce population.

How many FTE's does your agency dedicate to ADR? If none, how are your ADR activities staffed?

GAO has 1.5 FTE's in its Civil Rights Office (CRO) dedicated to ADR activities. There are no FTE's dedicated to ADR activities with regard to GAO's bid protest function.

What programs has your agency established during FY 1999 pursuant to the Administrative Dispute Resolution Act and the President's directive to promote greater use of ADR?

GAO's involvement in ADR began in 1990 when it established a mediation program aimed at providing employees with an alternative to the discrimination complaint process for resolving their workplace disputes. Although the Administrative Dispute Resolution Act does not apply to GAO, we comply with

the spirit of the Act and encourage the use of ADR whenever possible. No new programs were established during fiscal year 1999.

What ADR programs has your agency expanded or improved during FY 1999?

During fiscal year 1999, GAO continued to promote its current ADR activities and as a result saw considerable expansion in the use of ADR. GAO did not change any particular ADR activities.

What benefits has your agency received from these programs?

What ADR success stories does your agency have to share with the President?

The use of mediation as a tool to resolve workplace disputes nearly doubled in fiscal year 1999 compared to fiscal year 1998. In fiscal year 1999, 21 cases went into mediation through the CRO office and 82% of those cases were resolved. Of the 5 mediation cases which involved concerns of discrimination, only 1 case went on to the formal discrimination complaint process. The increased use of ADR in resolving all types of workplace disputes and the success which has been experienced have saved the agency considerable resources.

With regard to GAO's bid protest function, fiscal year 1999 saw a substantial increase in the number of cases using ADR, from 53 cases in fiscal year 1998 to 88 cases. These increases were realized even though the overall caseload declined from fiscal year 1998 to 1999.² More importantly, ADR succeeded in resolving the protest (or cost claim) in 95% of the cases in which ADR was used, compared to a success rate of 83% in fiscal year 1998. The increasing successful use of ADR aids the prompt resolution of protests and cost claims which benefits GAO, the procuring agency, and the protester.

What are your agency's ADR goals, including resources necessary for the future?

The agency looks forward to providing more educational and outreach activities in order to promote the use of ADR in workplace disputes. Some of these activities include increased training for in-house mediators, lunch time seminars, newsletters, and a conference to celebrate the GAO mediation program's 10th anniversary.

With regard to the bid protest function, the agency intends to continue to work towards using ADR whenever possible and as early as possible in the protest process so as to maximize the benefit to the parties and to GAO.

² In fiscal year 1998, 406 merit decisions (sustained or denied protests) were rendered, while in fiscal year 1999, 347 merit decisions were rendered.

REPORT TO THE PRESIDENT ON AGENCY ADR ACTIVITIES

Agency name: General Services Administration (GSA)

Agency Dispute Resolution Specialist:

Name: Stephenie Foster, General Counsel

Phone: (202) 501-2200

Email address: stephenie.foster@gsa.gov

Other ADR points of contact:

Name: Regina M. Budd, Office of the General Counsel

Phone: (202) 501-1460

Email address: regina.budd@gsa.gov

Name: William Conley, Office of Civil Rights

Phone: (202) 501-0767

Email address: william.conley@gsa.gov

Name: Allen Pounsel, Office of the Chief People Officer,
Human Resources Policy and Planning Division

Phone: (202) 501-4678

Email address: allen.pounsel@gsa.gov

Does your agency have an ADR policy statement? Yes X No

What is your agency's ADR budget?

For FY 1999, the Office of Civil Rights had a line item in the budget for EEO/ADR in the amount of \$22,000.00. There is no line item in GSA's budget for FY 2000 for ADR.

If you do not have a budget, how are your ADR activities funded?

GSA's ADR activities are funded by the Office of Civil Rights, the Office of General Counsel and the Service and Staff Offices in the GSA Headquarters and Regional Offices, on an as needed basis.

The ADR activities conducted by the GSA Board of Contract Appeals (the Board) are funded from funds allocated to the Board for its personnel, travel, and other program costs. ADR is an integral part of the Board's function of hearing and deciding contract disputes between government contractors and

This report does not include information on programs or activities of the General Services Board of Contract Appeals. This information will be provided in a supplemental response to be submitted shortly.

GSA, and between contractors and other Executive agencies, including the Department of Treasury, the Department of State, the Department of Commerce, and the Department of Education. Under the board's rules of procedure, parties are encouraged to consider the feasibility of using ADR as soon as their case is docketed. ADR services by the Board to Executive agencies, both in contract disputes which are the subject of a contracting officer's decision and in other contract-related disputes, are provided on a reimbursable basis.

How many FTE's does your agency dedicate to ADR?

No FTE's are dedicated solely to ADR.

If none, how are your ADR activities staffed?

Some of the staff in the Office of Civil Rights and the Office of General Counsel have ADR responsibilities as a part of their official duties. GSA's mediators are staffed on a collateral duty basis. Some mediation services are provided by vendors and under Shared Neutrals Programs.

All of the Board's eight judges conduct ADR. Other Board personnel, such as the judges' Legal Staff Assistants, support the judges' ADR activities as required.

What programs has your agency established during FY 1999 pursuant to the Administrative Dispute Resolution Act and the President's directive to promote greater use of ADR?

GSA assisted the Federal Executive Board, the Veterans Administration and other agencies in organizing the Shared Neutrals ADR Program (SNAP) in the Great Lakes Region and officially joined SNAP in June 1999.

What ADR programs has your agency expanded or improved during FY 1999?

GSA's Office of Civil Rights expanded its program by providing advanced training for the in-house mediators and drafted operating procedures, which currently are under review. The Office of Civil Rights and Office of the General Counsel teamed to market the ADR concept on a nationwide basis, providing over 25 awareness briefings for GSA's employees, managers and union officials. GSA's Administrator issued a memorandum to all employees and a video message encouraging maximum use of ADR for any disputes arising at GSA. The Office of General Counsel sponsored a one-day ADR workshop by the Department of Justice for GSA's attorneys in Central Office and the National Capital Region; and video tapes of this workshop were prepared for dissemination of all regional offices. The Human Resources Policy and Planning Division has proposed revisions to the agency's administrative grievance process which incorporate an ADR component.

What benefits has your agency received from these programs?

There has been an increase in interest from employees to participate as in-house mediators and to receive additional ADR training. GSA has benefitted by the increased monetary savings; reduction of employee and management time in resolving conflicts; and increased communication between the parties.

Other Executive agencies have received benefits from GSA's ADR program. In addition to conducting ADR in connection with disputes between contractors and GSA, the Board provides ADR services to other Executive agencies both in contract disputes which are the subject of a contracting officer's decision and other contract-related matters.

What ADR success stories does your agency have to share with the President?

There are several success stories where agency officials have used mediation, arbitration or other ADR techniques to resolve conflicts. The outcomes of several strategic cases through the use of ADR have resulted in big savings to the Government. One case involved the settlement of a \$10M claim arising out of a Federal Courthouse project. The case was settled for \$3.7M, of which GSA's share was only \$1.2M. Another case involved the settlement of a \$5.8M claim arising out of a condemnation action for which Government estimates were \$7M. This settlement represents a savings to the Government of \$1.2.

The Office of General Counsel and the Office of Civil Rights have achieved non-monetary resolutions in complex Equal Employment Opportunity (EEO) and grievance cases, thereby reducing the need for managers to invest crucial time in lengthy claims litigation.

During FY 1999, twenty-eight (28) EEO cases were settled nationwide. Nineteen (19) of these cases were settled through the traditional negotiation process and nine (9) were settled through ADR.

What are your agency's ADR goals, including resources necessary for the future?

- To continue to promote ADR awareness and usage for any disputes that arise at GSA;
- To develop the GSA Shared Neutrals concept on a nationwide basis;
- To continue to maintain relationships with the Federal Executive Boards in energizing its Shared Neutrals Program in order to have an increased pool of ADR resources that can benefit GSA and other agencies;
- To continue to develop GSA's in-house cadre of neutrals by providing advanced and co-mediation training;
- To ensure the availability of agency resources sufficient to meet ADR goals and objectives; and

- To dedicate FTE's for ADR.

REPORT TO THE PRESIDENT ON AGENCY ADR ACTIVITIES

Agency name: Health and Human Services (HHS)

Agency Dispute Resolution Specialist and other ADR points of contact:

Cecilia Sparks Ford, Chair
Departmental Appeals Board (DAB) and
HHS Dispute Resolution Specialist
(202) 690-8020
cford@os.dhhs.gov

Neil H. Kaufman, Director of Mediation Services
Departmental Appeals Board
(202) 690-7006
nkaufman@os.dhhs.gov

Additional agency ADR contacts are available through the DAB.

Does your agency have an ADR policy statement?

The Chair of the DAB, as the Department's Dispute Resolution Specialist under the Administrative Dispute Resolution Act (ADRA), crafted an interim statement of policy for the Department, published at 57 Fed. Reg. 208, Tuesday, October 27, 1992. In addition, some Departmental agencies have developed their own policy statements. During FY 2000, the DAB plans to co-convene a series of implementation strategy sessions. A revised Department-wide policy is one of the outcomes expected from these sessions.

What is your agency's ADR budget?

There is no budget earmarked for implementing the ADRA at the Departmental level. The HHS Dispute Resolution Specialist funds work in this area through collateral duty by permanent DAB staff and, on a limited basis, through temporary staff hired with funds generated by memoranda of agreement with agencies of the Department. Several subordinate agencies have ADR budgets (e.g., the National Institutes of Health (NIH) has an ADR budget of \$982,000 and the Indian Health Service (IHS) has an ADR budget of \$97,000). More typically, subordinate agencies support ADR activities within existing budgets.

How many FTE's does your agency dedicate to ADR?

The number of FTE's dedicated to ADR varies across the Department. Some examples follow: NIH-7; Centers for Disease Control and Prevention (CDC)-3; Substance Abuse and Mental Health Services Administration (SAMHSA)-.5; Office of the Secretary/Management and Budget-4; Departmental Appeals Board-.5

Other Resources: the dedicated positions are supplemented by staff who perform ADR functions as part of their ongoing work; this is particularly true of staff responsible for implementing the ADRA at the Departmental level (i.e., DAB staff) and staff in Human Resources and EEO functions.

Some ADR services are also provided by outside contractors. These include training (e.g., Food and Drug Administration (FDA), mediation services (Office for Civil Rights), and ombuds services (Agency for Health Care Policy and Research).

Also, Intra-Departmental Memoranda of Agreement are used to provide services and program support. An agreement between the IHS and the Departmental Appeals Board supports an FTE responsible for training, ADR systems design, and mediation services.

In addition, mediation services are provided as a collateral duty by HHS employees. We estimate at least thirty HHS staff provide these services through various agency-specific mediation programs. Another twenty-nine HHS employees mediate cases through the Interagency Sharing Neutrals program.

What programs has your agency established during FY 1999 pursuant to the Administrative Dispute Resolution Act and the President's directive to promote greater use of ADR?

- C Implemented a pilot program for mediating informal EEO complaints at Headquarters and 10 Regional Offices. *Office of Management and Budget/Office of the Secretary*
- C Developed a pilot program in partnership with the American Federation of Government Employees (AFGE). *Health Care Financing Administration (HCFA)*
- C Developed lecture series, Executive Seminar in Working with Conflict, now underway. Series is targeted to top executives including Institute Directors and Deputies, Scientific Directors, Clinical Directors, and Executive Officers. *Ombuds Program and Center for Cooperative Resolution, National Institutes of Health*
- C Initiated a project to encourage mediation of civil sanctions imposed by HCFA under the President's Nursing Home Initiative. Appeals of such cases far exceeded resources available for adjudication. *Departmental Appeals Board*
- C Trained IHS Area Contracts and Acquisitions Managers in ADR applications. *Indian Health Service and Departmental Appeals Board*
- C Revised Complaint Resolution Manual to include ADR/Early Complaint Resolution as part of its "triage" for dealing with complaints. *Office for Civil Rights*

What ADR programs has your agency expanded or improved during FY 1999?

- C Expanded availability of mediation for cases pending appeal before the Provider Reimbursement Review Board. During FY 1999 the Office of Hearings and Appeals completed mediation of 81 cases with mediation underway in an additional 53 cases. *Health Care Financing Administration*
- C Expanded the Drug Rebate Program nationwide involving virtually all major pharmaceutical manufacturers and States. The program uses ADR to resolve disputes involving rebates to manufacturers. A “Best Practices Guide for Dispute Resolution under the Medicaid Drug Rebate Program” was produced through a private/public partnership and will be distributed widely. *Center for Medicaid and State Operations, Health Care Financing Administration*
- C Adopted a new procedure that provides companies with the opportunity to refer a medical or scientific dispute to an outside advisory group of scientists. *Food and Drug Administration*
- C Expanded training to all agency locations. Types of training offered include: Conflict Resolution Skills for Individuals; Conflict Resolution Skills for Supervisors and Managers; Facilitation Skills Training; and Team Building. *Centers for Disease Control and Prevention*
- C Increased use of early intervention to resolve workplace disputes. This voluntary approach utilizes a third-party neutral. *Centers for Disease Control and Prevention*
- C Developed two types of peer panels. The first will use scientific peers from within the Institutes, with consent of the disputants, to aid in resolving disputes between and among scientists regarding issues such as authorship, credit and acknowledgment, sharing or control of data, etc. The second type, to be piloted in five Institutes, involves employee-manager panels to address workplace disputes. *National Institutes of Health*
- C Increased number of Participating Agencies in Interagency Sharing Neutrals program to thirty-two; HHS, as administering agency, referred mediators for nearly eighty cases in FY 99. *Departmental Appeals Board*
- C Established an Ombuds position to aid in resolving disputes as early as possible. *Agency for Health Care Policy and Research*
- C Provided ADR training to over 400 employees and encouraged greater use of mediation in Board cases (more than doubling such use over previous year). *Departmental Appeals Board*

- C Supported the use of mediation in forty cases appealed to the Departmental Appeals Board under the Agriculture Research, Extension, and Education Reform Act of 1998. *Office of the General Counsel & Office of Management and Budget/Office of the Secretary*

What Benefits has your agency received from these programs?

- C Reduced processing times for EEO complaints and labor grievances. EEO complaints addressed in four to eight months in informal stage compared to two to three years in formal process; grievances shortened by three to four months. *Office of Research Services, National Institutes of Health*
- C Reduced number of pending appeals; also reduced the time required to resolve pending appeals to approximately six months compared to the formal process which takes approximately three years. *Office of Hearings and Appeals, Health Care Financing Administration*
- C Increased funds for States and Federal governments with \$500 million from disputed rebates resolved through the Dispute Resolution Program. *Center for Medicaid and State Operations, Health Care Financing Administration*
- C Resolved disputes between the agency and industry more quickly, cheaply, while preserving working relationships. *Office of the Chief Mediator and Ombudsman, Food and Drug Administration*
- C Increased satisfaction of employees and management through use of ADR as an effective way to handle disputes. *Centers for Disease Control and Prevention*
- C Reduced the cost of litigation and improved understanding and relations with the union. *Administration for Children and Families*
- C Reduced costs of complaints resulting in savings which have been reallocated to compliance reviews. *Office for Civil Rights*
- C Reduced litigation costs in EEO complaints. *Indian Health Service*

What ADR success stories does your agency have to share with the President?

Settling State-Federal Cost-Allocation Disputes

Forty States and the District of Columbia appealed determinations by the Secretary of HHS requiring reductions in the States' Food Stamp and Medicaid claims. . The Agriculture Research, Extension, and Education Reform Act of 1998 mandated the determinations and required HHS to provide an appeals process. The Act specified strict time-frames for appeal and outlined a two-tiered appeals process:

first, an Administrative Law Judge hearing and, second, a right to appeal the ALJ determination to the Departmental Appeals Board.

All the appellants were offered mediation under the Board's mediation program. Of the forty-one states which elected mediation, forty have negotiated settlements to date.

This process allowed the Department to avoid costs of over \$600,000 in appeals. In addition, the process saved considerable time (administrative appeals could have taken two years, compared to the six months for mediation). Also, by the parties' own assessment, mediation allowed for a fairer and less acrimonious settlement of differences, thus preserving on-going relationships between State and Federal officials involved in cost allocation issues.

Medicaid Drug Rebate Program Receives National Recognition

The Center for Medicaid and State Operations' Drug Rebate Program was selected as one of the twenty-four finalists for the prestigious Innovations in Government Award by the Ford Foundation, the John F. Kennedy School of Government at Harvard, the Council for Excellence in Government. The \$20,000 grant award will be used to provide information about the project's effectiveness to a wide audience of potentially interested parties.

Scientific Disputes Resolved

Among the disputes resolved is a long term research project, in danger of collapse, because of disagreements among the collaborators. The project was salvaged and restored through the use of a partnering agreement designed to avoid the re-emergence of past conflicts and to address future issues.

What are your agency's ADR goals, including resources necessary for the future?

Responses from principal components include the following:

Health Care Financing Administration: address workplace complaints separate and apart from the EEO process; in addition, the Drug Rebate Program directors recommend that the DRP program be institutionalized with related ADR activities as a program component with dedicated resources.

Management and Budget, Office of the Secretary: publicize success stories to encourage the use of ADR; continue labor-management partnership capacity-building activities.

Food and Drug Administration: increase efforts to communicate to the regulated industry the availability of ADR as a way of pursuing review of regulatory actions.

Substance Abuse and Mental Health Services Administration: expand ADR to include workplace disputes (non-EEO); obtain funding and staff to accomplish this.

Centers for Disease Control and Prevention: provide all employees the opportunity to resolve workplace disputes through the use of ADR.

Administration for Children and Families: increase use of ADR in the EEO complaint process as well as grievances.

Health Resources and Services Administration: train ADR officer and other coordinators; expand training to include management and other employees. Begin to build pool of in-house mediators.

Program Support Center: explore establishment of an ADR Specialist position.

Agency for Health Care Policy and Research: monitor the recently established Ombuds position and determine effectiveness.

Indian Health Service: provide training in cultural awareness and communication to headquarters and field staff to reduce incidence of workplace disputes.

Office of the General Counsel: continue to support appropriate use of ADR in employment disputes and cases before the DAB.

Departmental Appeals Board, Office of the Secretary: continue leadership role in the Department's effort to implement the ADRA by providing ADR coordination, training, and services and increase use of mediation in DAB cases.

REPORT TO THE PRESIDENT ON AGENCY ADR ACTIVITIES

Agency/Bureau: Health Resources And Services Administration

ADR Specialist Name: Louise Monroe
Phone: 301-443-4618
Email: LMONROE@HRSA.GOV

Other ADR POC Name: Norma Brinkley-Staley
Agency ADR Officer
Phone: 301-443-1901
Email: NBRINKLEY-STALEY@HRSA.GOV

Does your agency have an ADR policy statement: No

ADR budget: No budget at this time.

How are ADR activities being funded:

The ADR activities are funded by the current budget.

How many FTEs: None at this time

How are ADR activities staffed:

The ADR activities are included in the functions of specific employees who are considered ADR Coordinators.

What programs has your agency established:

The agency is currently developing an agency ADR Plan which will include EEO, personnel, grants and contracts. The plan is currently in the draft stage but will be complete by February 2000.

What ADR programs has your agency expanded:

HRSA has entered into an intra-agency agreement with the Appeals Board Mediation Program, DHHS.

What ADR programs has your agency expanded:

HRSA has entered into an intra-agency agreement with the Appeals Board Mediation Program, DHHS.

What benefits has your agency received:

The agency has not used the agreement at this time.

What ADR success stories:

None at the present time.

What are your agency ADR goals:

After the plan is finalized, the agency ADR Officer and other ADR Coordinators will be trained in the ADR process. HRSA also plans to train managers and employees as well.

HRSA plans to send the agency ADR Officer and other ADR Coordinators to mediation training and begin to build in-house mediators.

REPORT TO THE PRESIDENT ON AGENCY ADR ACTIVITIES

Agency Name: Housing and Urban Development

ADR Specialist:

Robert Walker

202 708 5921 ext.

Robert_A._Walker@HUD.GOV

Carol Bernstein

202 708 5921 ext.5058

Carol_W._Bernstein@HUD.GOV

Policy Statement: HUD will issue its ADR policy statement in connection with the implementation of its Equal Employment Opportunity(EEO)Complaint Process ADR program on or before January 1, 2000. However, the policy statement commits the agency to the avoidance of conflict in the first instance and repair and resolution of conflict when it does occur. This policy represents an expansion of the agency's current policy championing a diverse and valued workforce.

What is your agency's ADR budget: HUD's Office of Departmental EEO budgeted 1.5 million dollars for the three year period 1999 through 2001 for the development and implementation of its EEO ADR program by a contractor. The budget includes the cost of a pilot program and mediators through the period ending 2001. Additionally, the resources of the EEO Office are committed, in part, to ADR functions, i.e., counseling, Resolution Panel, as are program resources, i.e., complaints manager function.

Staffing: One full time staff member (attorney member of Resolution Panel) and three staff members (one Office of Human Resources and two EEO staff) spending half of their work time on ADR. Additionally, full time, collateral duty, and contract counselors as well as complaints managers in each of the program offices spend a portion of their work day on ADR related matters.

Program establishment: In addition to the on-going development and implementation of the EEO Complaint Process ADR Program, during fiscal year 1999 HUD's Deputy Secretary created a Resolution Panel to review pending EEO complaints. The panel, comprised of personnel with expertise in EEO and personnel matters, identifies complaints that appear to involve instances of mismanagement or unfair or insensitive treatment, rather than illegal discrimination, and recommends parameters for resolution. The recommendations are presented to the Deputy Secretary of the Department. If he agrees with the recommendations, he issues directives to management to attempt to resolve the matter in accordance with the parameters he establishes.

Program Expansion: HUD's EEO Complaint ADR program, which has been named Conflict Avoidance Repair and Resolution (CARR), is an outgrowth of HUD's mandatory training of all HUD employees on Diversity and Employee Valuation.

Benefits: The Deputy Secretary's Resolution Panel reinforces the Department's commitment to effectively and efficiently resolving employee disputes. The Deputy Secretary's involvement reminds managers and supervisors that senior management expects them to appropriately address employees disputes and will intervene, if necessary. Management must be educated to the obvious benefits of ADR: a workforce that believes its concerns are fairly addressed is a productive workforce. The Resolution Panel's successes pave the way for the acceptance of ADR as a viable alternative to the more traditional means of addressing employee disputes. The EEO Office anticipates that the majority of employee disputes will be resolved through the ADR process, either through the efforts of the Resolution Panel or in mediation. Success of the ADR program in the employment arena will hopefully lead to the use of ADR with respect to differences that arise between HUD and its clients and its partners.

Success Story: The Resolution Panel has resolved several EEO complaints. Of note are: the resolution (retroactive promotion) of a complaint filed by a female senior attorney who spent five years performing at a higher grade level without appropriate compensation; the resolution (outstanding performance appraisals) of a complaint filed by a longtime employee whose supervisor substantially lowered his evaluation of her performance because he perceived she had complained about his management style; resolution (retroactive promotion) of complaint filed by an employee who was denied a career ladder promotion while co-workers were promoted. There are other complaints that have been recommended by the Panel, and approved by the Deputy Secretary, for resolution that await action by principal staff of various program offices.

Goals: The Department's goal is to ensure that its most valuable resources, people, are provided a work environment free from any form of impermissible discrimination. Moreover, we aim to create a workplace that fosters open and honest discussion of concerns and problems that interfere with the accomplishment of the Department's mission. Finally, we intend to train and prepare supervisors, managers and executives to utilize a broad range of communication, interpersonal and other techniques, including mediation, to address human resource issues with a sense of immediacy. These initiatives should reduce tensions in the workplace and avoid lengthy and costly litigation. Ultimately, the Department hopes to expand its ADR/CARR program to cover all employee disputes, not just EEO matters, and later to cover disputes emanating from the agency-client relationship. To effectuate the ultimate goal, an ADR program that covers all disputes, substantial resources, in addition to those already committed, will need to be allocated by the agency to that endeavor.

REPORT TO THE PRESIDENT ON AGENCY ADR ACTIVITIES

Agency/Bureau: Indian Health Service

Agency Dispute Resolution Specialist: Cecelia Heftel
Phone: 301-443-1108
Email: cheftel@hqe.ihs.gov

Other ADR POC Name: Jamie Blume
Phone: 202-260-9632
Email: jblume@os.dhhs.gov

Does your agency have an ADR policy statement: No

ADR budget: \$97,000.00

How are ADR activities being funded:

How many FTEs: 0

How are ADR activities staffed: The Equal Employment Opportunity and Civil Rights Staff, Indian Health Service and the Departmental Appeals Board Mediation Program, Department of Health and Human Services have a Memorandum of Understanding for providing mediation services during the informal/formal discrimination complaint process. This includes providing funds to the Departmental Appeals Board Mediation Program in support of one FTE. All mediation services provided by Departmental Appeals Board Mediation Program includes training, program design/consultation and mediating cases.

What programs has your agency established: See answer above.

What ADR programs has your agency expanded: Tentatively the Indian Health Service Equal Employment Opportunity and Civil Rights Staff and the Departmental Appeals Board Mediation Program are in the process of expanding the above-mentioned MOU by working closely with the Equal Employment Opportunity Commission (EEOC). EEOC will provide co-mediators who will contribute EEO expertise to the program.

What ADR programs has your agency expanded: Tentatively the Indian Health Service Equal Employment Opportunity and Civil Rights Staff and the Departmental Appeals Board Mediation Program are in the process of expanding the above-mentioned MOU by working closely with the Equal Employment Opportunity Commission (EEOC). EEOC will provide co-mediators who will contribute EEO expertise to the program.

What benefits has your agency received: Having a neutral group of mediators communicating directly to IHS complainants and grievants has been helpful in resolving some of the concerns. Reduces IHS' litigation costs.

MOU provides additional resources for IHS that includes on-site training and consultation.

What ADR success stories: The results of Departmental Appeals Board Mediation Program's ADR Training Evaluation forms received in FY 98/99 reflect the employees' appreciation that the agency cares enough to provide another resolution process.

What are your agency ADR goals: The Equal Employment Opportunity and Civil Rights Staff, Indian Health Service, and the Departmental Appeals Board Mediation Program are currently looking into adjusting the current ADR training curriculum to include cultural sensitivity for all employees.

REPORT TO THE PRESIDENT ON AGENCY ADR ACTIVITIES

Agency name : Department of the Interior

Agency Dispute Resolution Specialist :

Name: Robert L. Baum, Chair, Interior Dispute Resolution Council
Director, Office of Hearings and Appeals
Phone: (703) 235-3810
Email address: Robert_Baum@ios.doi.gov

Other ADR points of contact :

Name: Elena Gonzalez
Special Assistant to the Director
Office of Hearings and Appeals
Phone: (703) 235-3810
Email address: Elena_Gonzalez@ios.doi.gov

Does your agency have an ADR policy statement?

Yes-DOI's Final Policy published in the Fed. Reg. August 1996
See 61 Fed.Reg. 40424 (August 2, 1996).

What is your agency's ADR budget?

No departmental ADR budget in the past. The budget for this year will not be decided until January 2000, and will range from \$200,000 (which has already been approved) to \$ 1- million (the bulk of which has been requested but not approved) for Departmental ADR activities. In addition, each bureau is responsible for funding its own ADR activities. The Bureau of Land Management, U.S. Geological Survey and Bureau of Reclamation each fund one FTE; in addition, the Bureau of Reclamation has budget \$450,000 (which is available over two years.)

If you do not have a budget, how are your ADR activities funded?

The Department of the Interior established a decentralized ADR policy in 1994 encouraging each bureau to develop and implement its own ADR plan, and designating the Director of the Office of Hearings and Appeals (OHA) to provide guidance and coordination for the Department. Under the Department's ADR policy, each bureau determines how to fund its own ADR activities from its existing budget.

How many FTE's does your agency dedicate to ADR?

At this time, there are no FTEs in OHA for ADR, but three bureaus within the Department have a full-time ADR position. All other bureaus and OHA perform ADR functions as a collateral duty. Including the number of individuals performing ADR functions as a collateral duty, the total number of FTEs dedicated to ADR is estimated to be seven.

If none, how are your ADR activities staffed?

In most bureaus and in OHA, ADR activities are staffed as a collateral duty. The Director of the Office of Hearings and Appeals serves as the Department's dispute resolution specialist and Chairman of the Interior Dispute Resolution Council as one of his responsibilities. An attorney on his staff assists him as a collateral duty. Each bureau has designated a bureau dispute resolution specialist to work on ADR at least as a collateral duty.

With anticipated ADR funding, it is expected that full time staff will be hired to oversee the implementation of the CORE program (workplace disputes), and to carry out OHA's ADR responsibilities at the Departmental level.

What programs has your agency established during FY 1999 pursuant to the Administrative Dispute Resolution Act and the President's directive to promote greater use of ADR?

During FY 1999, the Interior Dispute Resolution Council was reactivated, and several significant ADR initiatives were advanced. In February, the council issued the first annual report to the Secretary on the bureaus' implementation of the Department's Final ADR Policy. Several introductory ADR trainings were sponsored by OHA, aimed at the Department's attorneys and judges. Guidelines were finalized for a department-wide early intervention program intended to address any workplace concern of any employee: CONflict RESolution (CORE) program. The CORE program will be implemented by the bureaus during FY 2000. In addition, the Department began focusing greater attention on the appropriate and effective use of ADR to manage natural resources and accomplish the missions of the bureaus. The chair of the dispute resolution council devoted a significant amount of time to educating top level management in each bureau on the importance of increasing and improving the use of ADR in the programmatic areas, and assisted each bureau in reviewing its existing ADR efforts and identifying success stories and opportunities for expansion. As a result of this education, each bureau has now designated a point of contact for Natural Resource ADR in addition to a workplace ADR specialist. The office of the solicitor has also begun to focus attention on the role of the attorneys to assist the bureaus' with their ADR efforts.

What ADR programs has your agency expanded or improved during FY 1999?

The Department of the Interior is expanding the use of ADR to address internal workplace conflict by requiring each bureau to supplement its existing ADR programs by implementing the CORE early intervention program. Department-wide minimum guidelines were established. This is the first ADR program coordinated and directed at the Departmental level.

The Bureau of Reclamation developed a new and broader ADR policy, which requires extensive training and education throughout the bureau and focuses on effectively preventing, managing and resolving conflicts.

What benefits has your agency received from these programs?

Where there are existing bureau programs addressing both workplace conflict and natural resource disputes, we have found improved quality of worklife for the Department's employees and greater satisfaction of the stakeholders and the decision-makers with the solutions reached and results achieved. We have found that when used appropriately, ADR techniques can lead to creative solutions which meet the needs of the Department and improve relationships and communications between bureaus and their customers, other governmental entities, the public and other stakeholders.

What ADR success stories does your agency have to share with the President?

Specific success stories will follow. The Fish and Wildlife Service reports successful negotiations of habitat conservation plans. The National Park Service succeeded in negotiating a rulemaking for the Cape Cod National Seashore. The Bureau of Land Management (BLM) has actively promoted the use of ADR to manage natural resources for several years with positive results. The Minerals Management Service's Royalty Management Program has successfully negotiated the collection of millions of dollars without litigation. The U.S. Geological Survey is working with scientists on INCLUDE. The Bureau of Reclamation's successful workplace conflict resolution program provided the model for the Departmental CORE program. The BOR's and BLM's ADR Resource Guidebooks and ADR webpages have received wide recognition both within and outside the Department.

What are your agency's ADR goals, including resources necessary for the future?

The Department of the Interior is committed to expanding and improving the use of ADR to resolve workplace and natural resources disputes. Our goal is to provide sufficient education and resources for the bureaus to build the capacity to identify when ADR may be an appropriate tool, and to learn how to effectively use it to our greatest benefit. To this end, a Department-wide workshop was held in November to address "ADR and Natural Resources: What's Working? What's Not? Where Do We Go From Here?" and has initiated the training of approximate 50 CORE dispute resolution specialists. In May of 2000, the Department of the Interior will also co-sponsor a national conference entitled "Alternative Dispute Resolution (ADR) and Natural Resources: Building Consensus and Resolving Conflicts in the Twenty-First Century." The purpose of the conference is for federal, state, and local government agency staff and nongovernmental parties (resource managers and users, environmentalists, community-based groups, and private property owners) to learn from ADR experts and from each other about their experiences with ADR in the context of natural resource management.

Another goal is to promote the use of ADR in addressing inter-agency and intra-agency conflicts. This issue is being explored with the U.S. Institute for Environmental Conflict Resolution and other providers of ADR services and training, including RESOLVE, CBI, Inc., and the Federal Mediation and Conciliation Service.

With respect to workplace conflict, the Department's goal is to ensure consistent access to, and quality of, appropriate ADR processes for all Department employees regardless of their particular bureau or geographic location.

Finally, the Department is developing an ADR webpage. The site will be completed by January 2000.

Report to the President on Agency ADR Activities

Agency Name: Department of Labor

Official Agency ADR Contact :

Name: Ronald Whiting, Deputy Solicitor for Regional Operations

Phone: (202)693-5262

Email: Whiting-Ronald@dol.gov

Staff ADR Contact :

Name: Robin Evans Dropiewski, Staff Attorney, Office of the Solicitor

Phone: (202)219-8065

Email :Evans-Robin@dol.gov

Does your agency have an ADR policy statement?

Yes. In 1992, after a request for comments in 1991, DOL published in the Federal Register an interim policy on the use of ADR and a subsequent amendment to the policy that expands the potential use of mediation in enforcement cases. The full text of both Federal Register entries, including a discussion of comments received, can be found at the website for DOL's ADR policy:

<http://www2.dol.gov/dol/asp/public/programs/adr/main.htm>

DOL also conducted a regional pilot test of in-house mediation in the Philadelphia Region in 1992. The Philadelphia ADR Pilot report can be found at:

<http://www2.dol.gov/dol/asp/public/programs/adr/philtitl.htm>

What is your agency's ADR budget?

Until FY2000, no funds were allocated specifically to ADR. DOL's FY2000 budget includes \$750,000 and 1 FTE for development of an Alternative Dispute Resolution Unit. In FY2001, the Department plans to build on those efforts and provide further resources to the ADR program.

If you do not have a budget, how are your ADR activities funded?

In 1994, DOL established an ADR program for addressing EEO complaints. This program is funded through the Civil Rights Center budget. The Department's Office of Administrative Law Judges (OALJ) also uses ADR; the OALJ Settlement Judge Program is funded through OALJ appropriations.

How many FTE's does your agency dedicate to ADR?

Under the FY2000 budget, OALJ will have one FTE dedicated to ADR; however, all administrative law judges have, or will soon have, training in mediation, and as such are available for appointment as settlement judges as part of the normal course of their duties.

If none, how are your ADR activities staffed?

For the most part, the Department's enforcement programs have no staff or resources devoted solely to ADR. This lack of resources has contributed to the slow growth of ADR services throughout the Department. Some programs, however, have been successful in ADR efforts without the support of FTE's. For example, the EEO program has no FTE's dedicated to ADR, but 11 staff are performing this function as part of their duties.

What programs has your agency established during FY 1999 pursuant to the Administrative Dispute Resolution Act and the President's directive to promote greater use of ADR? What ADR programs has your agency expanded or improved during FY 1999?

In FY 1999, DOL's Office of the Assistant Secretary for Administration and Management entered into an agreement with Local 12 to have the union invoke mediation in lieu of arbitration to handle the backlog of grievances. The Civil Rights Center will provide mediation services in accordance with the Memorandum of Agreement for specific types of cases. Also, ADR has been made a requirement in the EO complaint process under Section 188 of the Workforce Investment Act (WIA) for states receiving DOL federal financial assistance. Those regulations were published in the Federal Register November 12, 1999.

The FY 2000 Civil Rights Center budget contains \$100,000 to educate the states on the benefits of ADR. The FY 2001 budget, now pending at OMB, contains a request for \$150,000 to assist two states in establishing model programs in their complaint process under section 188 of the WIA. The Civil Rights Center will begin to educate the states on incorporating ADR in their complaint process as well as offer ADR directly to individuals who file complaints against recipients of financial assistance from DOL.

During FY 1999, OALJ amended its settlement judge regulation to include cases arising under the Longshore & Harbor Workers' Compensation Act. In addition, OALJ obtained FY 2000 funding for one dedicated FTE, for an intensive introductory training program for the judges not previously trained in ADR, and for advanced training for judges who have had previous training.

What benefits has your agency received from these programs?

ADR is a way for DOL to attempt to resolve internal workplace disputes and avoid costly litigation. Most workplace disputes arise from miscommunication or lack of communication between the parties. The ADR process allows for an opportunity to express views on workplace disputes, correct misperceptions about actions taken by supervisors and or employees, and discuss resolution. In many instances, ADR leads to withdrawal of a complaint.

Settlement judges have been made available, with certain exceptions, for proceedings before the Office of Administrative Law Judges since mid-August 1993. Over the past several years, use of this form of

ADR has increased, while a high ratio of successful mediations has been maintained. Specifically, a settlement agreement has been reached over seventy-four percent of the time that the settlement judge program is utilized.

What ADR success stories does your agency have to share with the President?

One employee, who alleged that a promotion was denied to her because of a disability, was promoted through mediation and was placed in a job assisting the agency in carrying out its responsibilities under the ADA.

The settlement judge program has been used in many program areas, but has been particularly useful in the informal resolution of cases involving whistleblowers and Office of Federal Contract Compliance Programs enforcement actions -- some involving substantial sums of money. For example, in August, a case involving a claim under the whistleblower provisions of the Energy Reorganization Act of 1974 was settled for \$975,000 through the work of a settlement judge. This positive experience has encouraged OALJ to take preliminary steps to establish a dedicated ADR unit, to train additional judges in mediation, and to change its procedural rules to make settlement judges available in longshore workers' compensation cases.

What are your agency's ADR goals, including resources necessary for the future?

With FY2000's budget request, the Department will encourage an increase in the use of ADR and begin assisting DOL's various enforcement agencies in developing ADR programs. We will also look for training opportunities on ADR techniques for Solicitor's Office attorneys who are already responding to court-ordered mediation and for others in the Department who would benefit from it. In FY2001, DOL will continue to build on these efforts.

OALJ will utilize the FY 2000 FTE and monies to train additional judges in mediation, and set up a highly trained ADR unit to prepare the groundwork for a proposed FY 2001 unit dedicated to the administration and promotion of ADR. This unit will centralize the assignment of ADR work by OALJ, provide administrative support for settlement judges and other appropriate methods of ADR, promote the availability of DOL OALJ for ADR within the agency, implement improved data capture relating to settlement judges and other ADR, and perform periodic evaluations of OALJ's ADR program and its effectiveness.

REPORT TO THE PRESIDENT ON AGENCY ADR ACTIVITIES

Agency Name - United States Marshals Service, U.S. Department of Justice

Agency Dispute Resolution Specialists and other ADR points of contact:

Thomas Mulhern
202-307-9863
Tom.Mulhern@usdoj.gov

Does your agency have an ADR policy statement?

Yes, both policy statement and handbook.

What is your agency's ADR budget?

*15,000. Additional resources are contributed from the labor relations office under the grievance adjudication contract to support mediation activities utilizing external neutrals.

How many FTE's does your agency dedicate ro ADR.

One.

What programs has your agency established during FY 1999 pursuant to the Administrative Dispute Resolution Act and the Presidents directive to promote greater use of ADR?

The USMS has explored the use of ADR for procurement contracts. To date no formal policy has been established.

What ADR programs has your agency expanded or improved during FY 1999.

The USMS has formalized the ADR program for work force disputes and has added private outside contractors to enhance the pool of USMS trained mediators for workplace disputes.

ADR and other interest based processed has been expanded to resolve organizational wide issues involving multiple disputants and issues.

What benefits has your agency received form these programs?

The USMS continues to receive a significant benefit in terms of number of workplace disputes resolved and higher percent (approximately 80%) of workplace dispute resolved without resorting to formal dispute channels.

What ADR success stories does your agency have to share with the President.?

During FY 1999 the USMS utilized the ADR process to resolve a significant organizational problem of racial discrimination and related organizational and leadership issues in the Northern District of Illinois. As a result of the intervention, the Northern District of Illinois has experienced a significant turnabout in office morale and effectiveness.

What are you agency's ADR goals, including resources necessary for the future?

To expand the use of workplace disputes mediation with inclusion of the EEO informal complaint process, the creation of a USMS wide dispute resolution center to encourage the use of interest based and informal approaches to dispute resolution and a expanded use of conflict management training .

REPORT TO THE PRESIDENT ON AGENCY ADR ACTIVITIES

Agency name: Merit Systems Protection Board

Agency Dispute Resolution Specialist:

Name: Susan Williams

Phone: 202.653.6772 X 1278

Email address: susan.williams@mspb.gov

Other ADR points of contact:

Name: Mary Jennings

Phone: 202.653.6772 X 1287

Email address: mary.jennings@mspb.gov

Does your agency have an ADR policy statement?

Yes

What is your agency's ADR budget?

None

If you do not have a budget, how are your ADR activities funded?

Almost half of MSPB employees have ADR responsibilities as part of their regular duties.

How many FTE's does your agency dedicate to ADR?

No FTE number available, although roughly 80 MSPB attorneys routinely engage in ADR involving parties before the Board.

If none, how are your ADR activities staffed?

As noted above, ADR activities are generally staffed as part of employees' duties. There are 2 1/2 FTE whose primary function is ADR at HQ.

What programs has your agency established during FY 1999 pursuant to the Administrative Dispute Resolution Act and the President's directive to promote greater use of ADR? What ADR programs has your agency expanded or improved during FY 1999?

- MSPB encouraged ADR by changing its regulations to extend the Board's normal 30-day filing deadline to 60 days if the parties agree to engage in ADR. 64 Fed. Reg. 27899 (May 24, 1999).

- MSPB initiated early intervention ADR through a formal training program to help agencies and employees resolve disputes while still at the agency level. Under this program, trained and certified dispute prevention specialists at the agencies will intercept and resolve employment disputes before appeals are filed with the Board.
- MSPB encouraged ADR even after an appeal has been filed by establishing a pilot project to allow parties to agree to suspend processing an appeal for up to 60 days where the parties believe additional time for discovery and settlement efforts would be fruitful.
- MSPB furthers ADR in procurement disputes by providing that issues not resolved by the parties are subject to ADR.

What benefits has your agency received from these programs?

The expanded time for filing and the formal training program are both intended to encourage agencies to use ADR in personnel matters appealable to MSPB--but before an appeal is actually filed with the Board. We believe the expanded time for filing will result in settlements and avoid appellants filing cases with the Board just to ensure that the filing deadline is met. The formal training program is also designed to further early intervention--assisting agencies and employees with personnel disputes to engage in ADR before the parties are in litigation at MSPB. The pilot project is designed to give the parties who think it would be useful sufficient time to resolve the matter even after an appeal has been filed.

MSPB caseload has remained stable over the last five years despite government downsizing. Encouraging parties to resolve personnel matters before MSPB becomes involved--and even after the initial filing--not only avoids adversarial litigation for the parties but also allows the Board to focus on adjudicating those cases that cannot be settled.

Settlement also saves MSPB (as well as the employer agency) money. For FY 1999, the average cost to MSPB to process a case was about \$2,800. The costs to the Government overall, of course, are much greater. Estimates have been as high as \$75,000 per case for a full adjudication.

What ADR success stories does your agency have to share with the President?

The first training session for Certified Dispute Resolution Specialists was held in September 1999. The second session will be held the week of November 15, 1999. The program, limited to 60 participants, filled up and applicants were turned away. After the first session, participants were to take a look at their agencies, identify problems or barriers to ADR, initiate actions to resolve issues, and try to get some success in acceptance of ADR in personnel matters. The participants will report back at the November session and identify areas to work on and methods to attack problems. The willingness of agencies to send employees to be trained as Dispute Resolution Specialists suggests that this program has great potential.

What are your agency's ADR goals, including resources necessary for the future?

- Holding at least two programs to certify Dispute Resolution Specialists in FY 2000, reaching a total of 180 certified specialists government wide.
- Continuing to settle about 50% of initial appeals.
- Continuing the ADR effort at the petition for review stage and maintaining a stable settlement level of 25% or over of selected cases (given that settlement is difficult, considering that settlement has already been attempted at the initial appeal level).
- Implementing by January 2000, an ADR program for internal EEO matters. We anticipate using outside mediators that will require additional resources.

- Determining the effectiveness of the current ADR initiatives and taking appropriate actions.

REPORT TO THE PRESIDENT ON AGENCY ADR ACTIVITIES

Agency Name: National Aeronautics and Space Administration

Agency Dispute Resolution Specialist:

Name: Robert Stephens
Deputy General Counsel
Email: rstephen@hq.nasa.gov
Phone: (202) 358-2053

Other ADR points of contact:

None

Does your agency have an ADR policy statement?

Yes

What is your agency's ADR budget?

NASA does not have a specific ADR budget.

If you do not have a budget, how are your ADR activities funded?

ADR activities are funded through the EEO Offices at NASA Centers and Headquarters for workplace disputes, as well as the Operations or Business Management Offices for other matters.

How many FTE's does your agency dedicate to ADR?

None

If none, how are your ADR activities staffed?

ADR activities are staffed through various functional offices at NASA Centers and Headquarters, including EEO offices, Human Resource Divisions, Business Management Offices, Safety, Reliability and Quality Assurance, and Legal Offices. NASA uses co-lateral duty mediators, contractors, and mediators provided by the Shared Neutrals Program to staff its ADR activities.

What programs has your agency established during FY 1999 pursuant to the Administrative Dispute Resolution Act and the President's directive to promote greater use of ADR?

The EEO Offices at all NASA Centers and Headquarters have been developing and/or refining their ADR programs. In particular, NASA's EEO Offices have been working on their ADR programs in order to meet the requirements of the Equal Employment Opportunity Commission's new regulations.

What ADR programs has your agency expanded or improved during FY 1999?

NASA has expanded its ADR programs to ensure that ADR is offered to employees at the informal and formal stages of the EEO process. NASA has provided greater training opportunities so that employees can serve as mediators. NASA has also sought to increase employee awareness as to the availability of ADR and to involve the union in the development of ADR programs at the agency. What benefits has your agency received from these programs?

NASA has anecdotal information on the benefits of the ADR programs at NASA Centers and Headquarters. The Johnson Space Center reports that ADR has made a significant contribution to that Center's record of only three formal EEO complaints having been filed since 1996. The Kennedy Space Center (KSC) reports that since the establishment of an ADR program in 1993, 59% of the complaints that were mediated were resolved. KSC reports monetary savings in using ADR, as well as the benefit that early resolution has on an employee's productivity and morale. It is anticipated that as ADR becomes more widely used at the agency, NASA will reduce its litigation costs, improve communication between management and employees, and expedite resolution of disputes.

What ADR success stories does your agency have to share with the President?

The Glenn Research Center's Ombudsman Program has achieved a number of successes. For example, a NASA contractor disagreed with the agency's position that the contractor was not performing as expected. The contractor contacted the Ombudsman when it became apparent that the agency was not going to exercise the remaining option years on the contract. When the Ombudsman met with the contractor, procurement officials, and the contracting officer's technical representative, the dispute was settled amicably without litigation.

What are your agency's ADR goals, including resources necessary for the future?

NASA recognizes the benefit of expanding the use of ADR beyond the EEO system to other areas where disputes arise, such as personnel issues. NASA anticipates providing more training in the use of ADR and increasing its awareness of developments in the use of ADR within the Federal Government.

REPORT TO THE PRESIDENT ON AGENCY ADR ACTIVITIES

Agency Name: National Labor Relations Board

Agency Dispute Resolution Specialist and other ADR points of contact:

Name: Glenda Johnson
Telephone: 202-273-3976
Email: G_Johnson@NLRB.gov

Name: Peter Eveleth
Telephone: 202-273-2878
Email: Peveleth@NLRB.gov

Name: Mary LaMontagne
Telephone: 202-273-3969
Email: Mary_La_Montagne@SMTM.NLRB.gov

Does your agency have an ADR policy statement? Yes X No

What is your agency's ADR budget? \$ 0

If you do not have a budget, how are your ADR activities funded?

The NLRB uses mediators from the Interagency Sharing Neutral Program.

How many FTE's does your agency dedicate to ADR? 0

If none, how are your ADR activities staffed?

The NLRB's ADR activities are staffed by collateral duty employees.

What programs has your agency established during FY 1999 pursuant to the Administrative Dispute Resolution Act and the President's directive to promote greater use of ADR?

On January 1, 1999, the agency established the NLRB ADR Pilot Program for informal EEO Complaints.

What ADR programs has your agency expanded or improved during FY 1999?

None.

What benefits has your agency received from these programs?

The NLRB has benefited from networking with other Federal agencies and fostering better internal and external communication.

What ADR success stories does your agency have to share with the President?

Since the NLRB ADR pilot program will end on December 31, 1999, it's too early to fully evaluate the results of these efforts.

What are your agency's ADR goals, including resources necessary for the future?

The NLRB's ADR goals under the pilot program are to resolve issues before they become formal EEO complaints. By using trained mediators to assist parties in resolving disputes within short timeframes, costly and unnecessary litigation can be avoided. The program is an informal, cost effective and quick process for resolving potential complaints, which results in decreasing the number of formal EEO complaints.

Regarding resources necessary for the future, the NLRB will evaluate this at the end of the pilot program, which is December 31, 1999.

REPORT TO THE PRESIDENT ON AGENCY ADR ACTIVITIES

Agency name: National Oceanic and Atmospheric Administration

Agency Dispute Resolution Specialist and other ADR points of contact:

Name: Leila Afzal

Telephone: 202-482-2351

Email: Leila.Afzal@noaa.gov

Does your agency have an ADR policy statement? Yes ____ No X

NOAA has a policy statement in Workplace Disputes, we are currently working on a policy statement for Civil Enforcement.

What is your agency's ADR budget? \$0

If you do not have a budget, how are your ADR activities funded?

ADR activities for Civil Enforcement are not separately funded at this time. When the pilot program begins, this may change.

How many FTE's does your agency dedicate to ADR? 0

If none, how are your ADR activities staffed?

Implementing ADR in the Civil Enforcement is part of the responsibilities of the Managing Attorney for NOAA. She and four other attorneys have volunteered to work on the pilot program NOAA Office of General Counsel is implementing in Civil Enforcement.

What programs has your agency established during FY 1999 pursuant to the Administrative Dispute Resolution Act and the President's directive to promote greater use of ADR?

The Office of General Counsel is in the process of establishing an ADR program in Civil Enforcement. NOAA already has an established ADR program in Workplace Disputes.

What ADR programs has your agency expanded or improved during FY 1999?

See response above.

What benefits has your agency received from these programs?

We believe that ADR will provide another tool in the civil enforcement of environmental statutes. It is our hope that it will assist in resolving scientific and technical questions prior to trial which will reduce trial time and the “battle of the experts” which can be confusing to the judge or jury.

What ADR success stories does your agency have to share with the President?

None

What are your agency’s ADR goals, including resources necessary for the future?

Our goal is to begin our pilot program in our Natural Resources and Damage Assessment Division. If it proves successful, it is our hope to expand the program to other areas of Civil Enforcement. It is difficult to assess the resources that will be needed until the pilot program is completed. However, we do recognize that we will need funding for training of our attorneys and staff who wish to participate in ADR and to pay for the neutrals needed in dispute resolution.

REPORT TO THE PRESIDENT ON AGENCY ADR ACTIVITIES

Agency/Bureau: National Transportation Safety Board

ADR Specialist: Name: Bob Barlett, Acting EEO Director
Phone: 202-314-6446
Email: barletb@ntsb.gov

Other ADR POC: Name: Pearl Morton, ADR Mediator
Phone: 202-314-6237
Email: mortonp@ntsb.gov

Does your agency have an ADR policy statement: No

ADR budget: \$0.00

How are ADR activities being funded:

Presently, the EEO office provides funds for training and supporting activities of ADR mediators.

How many FTEs: none

How are ADR activities staffed: ADR mediators perform their ADR tasks as collateral duties.

What programs has your agency established:

EEO counselors were notified to suggest ADR as an alternative to the informal counseling process at the time of intake and as an option throughout the entire complaint process.

What ADR programs has your agency expanded:

An ADR mediator was trained, giving us a mediator in a regional office. Additional mediators will be trained in FY 2000.

What ADR programs has your agency expanded:

An ADR mediator was trained, giving us a mediator in a regional office. Additional mediators will be trained in FY 2000.

What benefits has your agency received:

ADR is a good alternative to the informal counseling procedure and its use is promoted at pre-intake throughout the entire process.

What ADR success stories: None at this time.

What are your agency ADR goals:

An ADR program will be developed per the EEOC requirements, a policy statement will be issued, and additional mediators will be trained and available for staff to utilize.

We are also considering whether to contract out this function.

REPORT TO THE PRESIDENT ON AGENCY ADR ACTIVITIES

Agency name: Occupational Safety and Health Review Commission

Agency Dispute Resolution Specialist and other ADR points of contact:

Name: Patricia A. Randle

Telephone: (202) 606-5380

E-mail: patrandle@OSHRC.gov

Does your agency have an ADR policy statement? Yes X No

What is your agency's ADR budget? \$0

If you do not have a budget, how are your ADR activities funded?

We do not have an ADR budget. ADR activities are funded as part of our normal operations from the agency's annual appropriations.

How many FTE's does your agency dedicate to ADR? 0

If none, how are your ADR activities staffed?

The Occupational Safety and Health Review Commission is too small to dedicate FTEs exclusively to ADR activities. All administrative law judges apply ADR techniques in every pending case to promote settlement. In addition, there are six administrative law judges, two attorneys and the executive director who have been trained specifically in alternative means of dispute resolution, including mediation. Additional administrative law judges will also be trained in alternative dispute resolution techniques at the Judicial College.

What programs has your agency established during FY 1999 pursuant to the Administrative Dispute Resolution Act and the President's directive to promote greater use of ADR?

In general, the Review Commission's administrative law judges are assigned cases that proceed one of three ways through the agency's *Settlement Part* pilot program, *E-Z trial*, or conventional process. Certain cases described below are removed from the conventional process and placed in the Settlement Part pilot program. Traditionally, a very high percentage of all cases are settled without a hearing.

In 1999 the Review Commission promulgated a new procedural rule--- *the Settlement Part*--- for very large cases (those involving more than \$200,000 in penalties) on a pilot basis. On February 19, 1999, the Review Commission's rules of procedures were modified to implement the *Settlement Part* program, which seeks to encourage and speed settlements and eliminate the need for proceeding to hearing on complex cases.

The *Settlement Part* applies to notices of contest by employers in which the aggregate amount of the penalties sought by the Secretary of Labor is \$200,000 or greater. It also applies to notices of contest by employers which are determined to be suitable for assignment for reasons deemed appropriate by the Chief Administrative Law Judge. The procedure was established as a vehicle to resolve high penalty disputes more quickly and economically with mandatory settlement talks between the parties under the supervision of a judge. These cases are fiercely litigated. When they go to trial, they are likely to take more than two years to resolve under our conventional process

A Settlement Part Judge is assigned to convene and preside over the conferences between the parties. Participation in the conference is mandatory. All statements made during the Settlement conference are confidential and are not made part of the official case record. If an agreement is not achieved within 120 days following assignment of the case to the Settlement Part Judge, the Chief Administrative Law Judge may extend the time for an additional 30 days if there is a likelihood that the parties could come to a settlement agreement. If a settlement agreement is not reached, the Chief Administrative Law Judge will assign the case to an administrative law judge other than the Settlement Part Judge or Chief Judge for appropriate action on the remaining issues.

A copy of the Rules of Procedure can be found at: www.oshrc.gov/procrules/2200subh.html.

What ADR programs have your agency expanded or improved during FY 1999?

The *E-Z Trial* Program was implemented in 1995 as an alternative to the traditional hearing process. It is designed for hearing less complex federal occupational and safety health cases before the Review Commission administrative law judges. The new trial process was designed to make contesting an OSHA citation much simpler, quicker and less costly for small employers. The amount in controversy was initially established to be \$10,000 or less in proposed penalties. In 1999 the agency expanded the use of the program to increase the amount of proposed penalties eligible for the program from \$10,000 to \$20,000.

In April 1998 the Agency received a Hammer Award for the program. The result has been a greatly shortened and simplified process for contesting a citation and related monetary penalty. The *E-Z Trial* process is quicker, less costly and involves fewer legal formalities than the conventional method of hearing.

E-Z Trial procedures streamline the legal processes, by for example, discouraging motions and discovery. The characteristics of the cases assigned to *E-Z Trial* include:

- C relatively simple issues of law or fact with relatively few citation items,
- C total proposed penalties of not more than \$20,000,
- C no allegations of willfulness or repeated violations,
- C no fatalities,
- C a hearing that is expected to take less than two days, or
- C a small employer whether appearing with or without an attorney.

Additional procedures governing the program can be found at www.oshrc.gov/e-ztext.html.

What benefits has your agency received from these programs?

The success of these programs has resulted in reductions in overall judicial processing times for less complex cases, significant savings by eliminating extensive legal processes, such as pleadings and discovery, and reduced attorney fees for the employer under the *E-Z Trial* program. It has also resulted in reduced annual operating costs for the Review Commission, thus enabling redeployment of resources to enhance mission effectiveness. There have been more than 2,000 cases assigned to *E-Z Trial* since its inception and approximately 21 cases assigned to the *Settlement Part*.

In Fiscal Year 1999, it took an average of approximately 165 days to resolve a case heard using *E-Z Trial*. The same year, it took an average of approximately 430 days to resolve cases heard using the conventional proceedings. Furthermore, of the 21 cases assigned to the *Settlement Part*, nine have settled or 40 percent of the cases. These complex and large cases historically have taken more than two years to resolve under our conventional process when they went to trial.

What ADR success stories does your agency have to share with the President?

As noted above, the *Settlement Part* program has drastically reduced judicial disposition time, thus saving the parties extensive legal costs and the agency significant operating costs. For example, the Review Commission recently processed a case under the mandatory *Settlement Part* in which penalties were assessed at over \$1.6 million. This case was successfully resolved through a settlement agreement by the parties. This case would have taken two years to process from the date of docketing to issuing the decision, including two to three months to litigate at a hearing. This settlement was reached within 180 days of docketing with the Review Commission.

What are your agency's ADR goals, including resources necessary for the future?

The Review Commission will continue to use both programs (*E-Z Trial* and *Settlement Part*) for case disposition for appropriate cases and will conduct an evaluation of both programs.

The *Settlement Part* pilot is scheduled to terminate on February 22, 2000, unless extended by the Commission by publication in the Federal Register. We will conduct an evaluation of the program to decide whether the Review Commission should continue the procedure, and if so, what modifications should be made, if any. The evaluation will take into account data on the rate at which settlements are achieved in large and complex cases and the length of time those cases remain on the Commission's docket before a settlement agreement is reached. The Commission will also consider the views of its judges and the parties regarding how well the process is working and how it might be improved.

We will also conduct an evaluation of the *E-Z Trial* program to ensure that our program provides the parties with a fair and economical method to resolve disputes.

The Commission will also revise its ADR policy statement to include disputes that are internal to the agency.

REPORT TO THE PRESIDENT ON AGENCY ADR ACTIVITIES

Agency/Bureau: Office of Government Ethics

ADR Specialist : Name: Donald A. Williams
Phone: (202) 208-8000, ext. 1151
Email: dawillia@oge.gov

Does your agency have an ADR policy statement: Yes

ADR budget: 0

How are ADR activities being funded:

ADR budget is not a separate line item in our small agency. The ADR Coordinator performs the function as a collateral duty.

How many FTEs: N.A.

How are ADR activities staffed: See previous response; ADR is a collateral duty.

What programs has your agency established: All agency employees received ADR training provided by the Federal Mediation and Conciliation Service.

What ADR programs has your agency expanded: N.A.

What ADR programs has your agency expanded: N.A.

What benefits has your agency received:

Greater employee awareness, through training, of the advantages of using ADR techniques to resolve conflicts.

What ADR success stories: One case successfully resolved using ADR.

What are your agency ADR goals:

Where appropriate, we will use ADR (versus other, more adversarial processes) as a first step in resolving employee disputes and grievances. The major thrust of our ADR program is mediation. The agency's EEO Counselors will receive intensive training to make them cognizant of cases which are suitable for resolution through mediation. As the agency's experience with utilizing ADR techniques increases, the ADR Coordinator will attempt to evaluate the effectiveness of those techniques.

REPORT TO THE PRESIDENT ON AGENCY ADR ACTIVITIES

Agency name: Office of Personnel Management

Agency Dispute Resolution Specialist and other ADR points of contact:

Name: Barbara J. Matthews-Beck

Telephone: (202) 606-2460

E-mail: bjmatthe@opm.gov

Name: Michelle Payton-Kenner

Telephone: 606-2460

E-mail: mdpayton@opm.gov

Does your agency have an ADR policy statement? Yes___ No X

What is your agency's ADR budget? \$ NONE

If you do not have a budget, how are your ADR activities funded?

Through Equal Employment Opportunity Office existing budget for staff support and individual budgets of organizations for mediation services.

How many FTE's does your agency dedicate to ADR? None

If none, how are your ADR activities staffed?

Staffed by EEO Office.

What programs has your agency established during FY 1999 pursuant to the Administrative Dispute Resolution Act and the President's directive to promote greater use of ADR?

Developed OPM Director's Award for Outstanding ADR Programs and recognized agency winners last July 27th with Attorney General Reno.

Developed and issued Alternative Dispute Resolution: A Resource Guide for use government-wide by those setting up or enhancing ADR programs.

What ADR programs has your agency expanded or improved during FY 1999?

Expanded use of ADR to bargaining-unit employees.

What benefits has your agency received from these programs?

Clarification of issues and concerns of employee and manager.

What ADR success stories does your agency have to share with the President?

OPM's Pilot ADR Program has been in operation for only a short time. Thus, we have no success stories to share at this time.

What are your agency's ADR goals, including resources necessary for the future?

To expand Pilot Program to employees in all geographic areas.

REPORT TO THE PRESIDENT ON AGENCY ADR ACTIVITIES

Agency Name: Office of Special Counsel

Agency Dispute Resolution Specialist:

Name: Julia Roig
Phone: (202) 653-2551 ext. 4606
Email: jroig@osc.gov

Other ADR points of contact:

Name: Cary Sklar, Senior Advisor to the Special Counsel
Phone: (202) 653-7122
Email: csklar@osc.gov

Does your agency have an ADR policy statement?

Yes

What is your agency's ADR budget?

FY 2000: \$72,000, plus travel costs as needed (because we anticipate that the ADR program will result in a reduction in travel by OSC Investigators, we anticipate travel costs to be revenue neutral).

FY 2001 (requested): \$263,000

If you do not have a budget, how are you ADR activities funded?

n/a

How many FTEs does your agency dedicate to ADR?

FY 2000: 1 FTE

FY 2001 (requested): 3 FTEs

If none, how are your ADR activities staffed?

n/a

What programs has your agency established during FY 1999 pursuant to the Administrative Dispute Resolution Act and the President's directive to promote greater use of ADR?

In FY 99, OSC convened a task force to design OSC's pilot ADR program. Questions addressed by the task force included whether OSC would offer ADR to resolve internal complaints filed by OSC staff, as well as external complainants filed pursuant to 5 USC 2302 by federal employees and applicants who allege prohibited personnel practices. Also considered was the type of ADR that OSC would offer, in what circumstances, and at what point in the complaint process it would be offered. The task force recommended to the Special Counsel that OSC employ mediation for both internal and external complaints. The task force also recommended that, if funding could be obtained, mediation would be offered to the majority of external complainants, at the point at which allegations of a prohibited personnel practice have been referred by OSC's Complaints Examining Unit to the Investigation Division.

Also addressed by the task force was the sources from which mediators would be drawn. The task force recommended that, a mix of trained in-house mediators drawn from OSC staff, and outside mediators, be used.

The task force also recommended that OSC hire an experienced ADR Specialist to continue designing the program and to begin implementing the program. The ADR program will be fully operational in February 2000.

What ADR programs has your agency expanded or improved during FY 1999.

See above.

What benefits has your agency received from these programs?

We anticipate that the ADR program will reduce the agency's backlog, as well as increase satisfaction among OSC's customers by helping to resolve complaints in a quicker, less adversarial manner than the traditional complaint resolution process. As noted below, the resultant reduction in the backlog should also positively impact processing time for those complaints that are resolved through the established investigative and prosecutorial process.

What ADR success stories does your agency have to share with the President?

OSC staff has been enthusiastic about integrating ADR into the OSC complaint processing system. We have also received expressions of interest and support from employing agencies. Although the ADR program will not be officially launched until February 2000, we have been mediating a handful of cases upon request from agencies and claimants.

What are your agency's ADR goals, including resources necessary for the future?

Whether cases are resolved through ADR, or through the full investigative and prosecutorial process, the integration of ADR into the process should help all of our cases be resolved more efficiently. Specifically, we anticipate that our program will help to reduce the backlog of cases at OSC. During the pilot stage of our program, however, we will be able to offer mediation to a limited number of complainants because of limited resources budgeted for FY 2000. As noted above, we hope to receive approval for the additional funds and FTEs to enable us to significantly expand the program in FY 2001.

REPORT TO THE PRESIDENT ON AGENCY ADR ACTIVITIES

Agency name: Pension Benefit Guaranty Corporation

Agency Dispute Resolution Specialist:

Philip R. Hertz, Deputy General Counsel
(202) 326-4020, ext. 3055
Hertz.Philip@PBGC.gov

Other ADR contact:

ADR Implementation Committee, Chair
Israel Goldowitz, Assistant General Counsel
(202) 326-4020, ext. 3078
Goldowitz.Israel@PBGC.gov

Does PBGC have an ADR policy statement?

Yes (published in 64 FR 17696(4/12/99))

What is your agency ADR budget?

PBGC's ADR activities are funded from various departmental budgets. For example, attorney ADR training and ADR expenses in litigation matters are funded by the Office of the General Counsel budget. ADR training and activities within PBGC's Human Resources Department, including EEO ADR training and activities, are funded by the HRD budget. PBGC's Problem Resolution Officers are funded through the departments whose programs they assist.

How many FTEs does PBGC dedicate to ADR?

PBGC has two Problem Resolution Officers whose work on behalf of premium payers and pension plan participants and beneficiaries involves a form of ADR a majority of their time. PBGC's Participant and Employer Appeals Department also engages in a form of ADR in referring certain appeals to operating divisions of PBGC. Other ADR activities are undertaken as collateral duty by five attorneys in OGC and by a human resources specialist in HRD.

What programs has PBGC established during FY 1999 pursuant to the Administrative Dispute Resolution Act and the President's directive to promote greater use of ADR?

Pursuant to the ADRA and the President's directive, and in anticipation of the new EEOC regulations providing that agencies may make ADR an option in the complaints processing program, PBGC established a multi-disciplinary committee to prepare such a program for PBGC. PBGC joined the Workplace Disputes and Small Agency Caucus sections of the IADR Working Group, and developed

an ADR program for use in EEO complaint processing. This program is now being sent to the union representing PBGC employees for review and, as appropriate, negotiation.

Working with the IADRWG Procurement section, PBGC also participated in preparing the Electronic Guide to Federal Procurement ADR, and will be proposing an ADR program for use in PBGC procurements.

At least one department head attended a day-long ADR training program outside of the agency, and several other managers and employees have taken courses in interest-based bargaining.

What ADR programs has PBGC expanded or improved during FY 1999?

OGC distributes its ADR Deskbook (prepared and distributed in connection with office-wide training for attorneys in 1997) to all newly-hired attorneys, and a brief ADR overview is included as part of OGC's in-house training program. The Deskbook includes primary materials on federal-sector ADR, some original materials including descriptions of PBGC's ADR success stories, and a bibliography and website directory. The PBGC attorneys on the ADR Implementation Committee also provide consultations on request.

PBGC had become a member of the Shared Neutrals Program. Six PBGC attorneys and EEO professionals signed on to be co-mediators. One attorney has been selected to mediate a case for another Federal agency later this month.

What benefits has PBGC received from these programs?

OGC's philosophy is that a working knowledge of ADR methods and concepts is part of every practicing lawyer's set of competencies. The ADR Deskbook and the opportunity to consult with a team of ADR experts within OGC provides PBGC attorneys with the necessary resources to integrate ADR into their practice.

In the course of developing PBGC's ADR Policy, the ADR Implementation Committee educated several program managers on the fundamentals of ADR, while collaborating on possible uses of ADR in various program areas.

Informal dispute resolution is already firmly rooted in several program areas, such as the ombuds function performed by Problem Resolution Officers in the premiums and benefits areas, and referrals by the Participant and Employer Appeals Department to operating divisions for a "fresh look" or for consideration of newly-discovered evidence.

What ADR success stories does PBGC have to share with the President?

In July 1999, PBGC's participation in mediation led to a favorable settlement of a fiduciary breach lawsuit. The mediation was sponsored by the court in which the case was pending. Because the case

was complex and involved multiple parties, the mediation and settlement conserved the parties' resources and helped ease the burden on the judicial system.

In another case, PBGC and National Treasury Employees Union agreed to use a version of med/arb to resolve an employee's complaint over her performance rating. The parties agreed to a morning of testimony before our Permanent Umpire, at which all parties to the dispute could share their views in a neutral environment. This was followed by an afternoon of mediated negotiations, and was to be followed by a 4 p.m. arbitration decision if no agreement was reached. The employee and supervisor both testified, and learned new facts and perceptions by listening to the other. Using this process, the employee, her supervisor, the agency, and the union reached an agreement. The employee and her supervisor are enjoying a much improved relationship, and the supervisor has put the employee in for an award based on post-mediation performance enhanced by their new relationship.

What are PBGC's ADR goals, including resources necessary for the future?

PBGC intends to continue on its present course of training employees in ADR, raising awareness of program managers on the use of ADR, and providing ADR consultations where appropriate.

REPORT TO THE PRESIDENT ON AGENCY ADR ACTIVITIES

Agency name: United States Postal Service

Agency Dispute Resolution Specialist and other ADR points of contact:

Name: Cynthia J. Hallberlin, Chief Counsel, ADR
Telephone: (202) 268-3055
Email: challbec@email.usps.com

Does your agency have an ADR policy statement? Yes ☒ No

What is your agency's ADR budget?

In FY 99, the Postal Service management committee allocated \$11,000,000 to REDRESS, the Postal Service's EEO mediation program.

If you do not have a budget, how are your ADR activities funded?

Not applicable

How many FTE's does your agency dedicate to ADR?

Currently, 105 employees are detailed to work on REDRESS, the Postal Service's EEO mediation program. There is a full-time REDRESS staff person detailed to each Area and Performance Cluster, which is a total of 99 positions. Each area is staffed with an EEO ADR Coordinator and each district with an EEO ADR Specialist. Six professionals comprise the REDRESS Task Force at USPS Headquarters. Additionally, the Law Department's ADR Team consists of three full time attorneys.

If none, how are your ADR activities staffed?

Not applicable

What programs has your agency established during FY 1999 pursuant to the Administrative Dispute Resolution Act and the President's directive to promote greater use of ADR?

The ADR Team's innovations included:

Creation of REDRESS II as a pilot program to mediate EEO complaints at the formal stage of the EEO complaint process.

Development of an Early Case Assessment program for U.S. District Court cases. This program was piloted in two field offices and will eventually be rolled out nationally.

Use of negotiated rulemaking in the Postal Service. Engineering and Delivery postal officials convened and negotiated rulemaking on mailbox construction standards.

Redesign of a two-day Mediation Advocacy course and presentation of this course to a field office.

Service of team members as negotiation counsel on cases identified as appropriate for mediation.

Development of advanced mediation advocacy training, which was presented for the first time at the Law Department Training Initiative.

Development, coordination and execution of a year-long series of lectures, panel discussions and workshops for over 49 participating federal agencies as co-chairs of the Interagency Alternative Dispute Resolution Working Group Workplace Dispute Section.

What ADR programs has your agency expanded or improved during FY 1999?

REDRESS I, an EEO mediation program, was expanded to each of the 85 postal performance clusters throughout the country. The REDRESS Task Force nationwide was tasked with implementing REDRESS in each district within two years. This task was accomplished six months ahead of schedule with highly favorable results. REDRESS is now available to every postal employee.

The expansion of REDRESS has included a comprehensive training program designed to prepare neutrals to mediate USPS cases and to prepare postal employees to participate in REDRESS. All of the training has been designed to support the transformative approach to mediation customized to meet the overall goal of changing the workplace climate. There has also been some specialized training in processes and procedures for REDRESS personnel. All training costs are paid by the REDRESS program budget.

What benefits has your agency received from these programs?

As part of the expansion of REDRESS, thousands of postal employees are receiving specially designed training in communication skills, mediation, and conflict resolution. Managing conflict in this more efficient and more effective way improves morale and allows employees and supervisors to spend more time processing mail and less time dealing with conflict. Potentially all employees in the Postal Service can benefit from REDRESS as supervisors and employees enhance their communication skills through mediation and its related training. These enhanced skills will ultimately improve the quality of workplace interactions through more effective conflict management.

When employees resolve their disputes quickly and satisfactorily through the REDRESS program they return their focus and energy to work. This renewed dedication benefits our customers, the American public, through greater productivity.

What ADR success stories does our agency have to share with the President?

In FY 99, nearly 9,000 cases were mediated through the REDRESS program and 81 percent of these were closed, leaving only 19 percent in which employees filed formal complaints after mediation. In FY 99, the number of formal complaints filed were reduced by sixteen percent (16%) from 14,407 to 12,137. This drop in formal complaints is, in large part, attributed to the implementation of REDRESS.

In comparison, where cases were not mediated, 44 percent became formal complaints. Even taking into consideration that individuals who choose mediation may be more inclined to settle their disputes, this very large drop in the percentage of formal complaints after mediation, nationwide, underscores the program's effectiveness.

In addition, satisfaction studies continue to indicate that participants (supervisors, employees and employees' representatives) are very satisfied with the mediation process, the mediation and the outcome. In fact, of the 7,000 surveys completed over 90% of supervisors, employees and employee representatives reported being equally satisfied with the mediation process as well as and their mediator.

Moreover, nearly three fourths of the participants reported being satisfied or highly satisfied with the outcome of the mediation. Significantly, there continues to be no statistical difference in satisfaction between supervisors and employees (employees' representative's satisfaction is statistically slightly higher than the supervisors and employees themselves). This finding was remarkable, given the inherent imbalance of power between supervisors and employees. This high degree of satisfaction has remained steady since the program was first implemented.

Although the national REDRESS Task Force was given until January 2000 to implement the program nationally, REDRESS became fully implemented at the end of FY99. Due to the program's impressive results, the postal management committee made participation in mediation a Voice of the Employee (management objective) goal for FY00. This goal establishes a 70 percent participation rate, which is arrived at by calculating the percentage of EEO complainants who accept mediation when it is offered to them. This is an important goal since we know that once employees participate in mediation, their disputes are likely to be resolved and communication between employee and supervisor is likely to improve. REDRESS, in its first year of implementation, has achieved an 81% closure rate. The closure rate reflects those cases that settled at the table, those that resolved shortly after the mediation ended, and those that were withdrawn altogether.

On July 27, 1999 REDRESS was recognized for its exemplary work in the area of research and evaluation, as the Postal Service was the recipient of the Office of Personnel Management Director's Honorable Mention Award for Outstanding Alternative Dispute Resolution Programs. At the award ceremony, the U. S. Attorney General applauded the contributions of the Postal Service, not only for its work associated with REDRESS, but also for its leadership role as co-chair of the Interagency ADR Working Group's Workplace Disputes Section. The Attorney General remarked, through the Interagency ADR Working Group, we are making great progress. Under the leadership of Mary Elcano, General Counsel at the Postal Service and Erica Cooper, Deputy General Counsel at the FDIC, more than 40 federal agencies are participating in training seminars, brown bag conferences, lectures

and panel discussions. These events are all designed to assist federal agencies in establishing effective federal ADR programs for workplace disputes. I want to personally thank Mary and Erica, because not only do they do their own work . . . but they take time to do this. And they don't do it superficially, they do it with great care, and I am deeply grateful.⁴

What are your agency's ADR goals, including resources necessary for the future?

The Postal Service's ADR future goals include:

Expansion of the REDRESS II program to all formal EEO complaints.

Expansion of the use of Early Case Assessment throughout the Law Department.

Training all attorneys in Mediation Advocacy.

Effective conflict management through increased use and awareness of ADR techniques.

⁴ This excerpt is taken from the transcript of Attorney General Janet Reno's keynote address presented at the Office of Personnel Management Director's Award Ceremonies for Outstanding Alternative Dispute Resolution Programs held on July 27, 1999.

REPORT TO THE PRESIDENT ON AGENCY ADR ACTIVITIES

Agency Name: Securities and Exchange Commission

Agency Dispute Resolution Specialist and other ADR points of contact:

Name: Harvey J. Goldschmid, General Counsel
Telephone: (202) 942-0900
Email: goldschmidh@sec.gov

Name: D. Leah Meltzer, Deputy Dispute Resolution Specialist
Telephone: (202) 942-0048
Email: meltzerd@sec.gov

Does your agency have an ADR policy statement? Yes X No _____

The policy was issued in the Federal Register on August 11, 1998.

What is your agency's ADR budget? \$ _____

If you do not have a budget, how are your ADR activities funded?

The Commission has established a fund to pay for private neutrals so that the funds do not have to come out of the budget of a particular office or division. Similarly, funds for training come out of an agency-wide training fund, and are not charged against a particular office or division.

How many FTE's does your agency dedicate to ADR?

1- the Deputy Dispute Resolution Specialist

What programs has your agency established during FY 1999 pursuant to the ADR Act and the President's directive to promote greater use of ADR?

We have initiated four new programs in enforcement, contracting, general litigation, and administrative grievance.

Division of Enforcement: We recently completed a series of internal recommendations for using ADR in litigated enforcement cases, both in administrative and federal court proceedings. During FY 2000, we plan to train our enforcement litigators and senior staff in ADR advocacy and to track our experiences using both court-appointed and private neutrals. We view these recommendations as dynamic and evolving as we learn from our experiences.

Contracting: By mid-year we completed internal policies governing the appropriate use of ADR in preventing and resolving contracting disputes. We also held a full day of training for all of our contracting officers, technical representatives and legal staff (contracts) in the appropriate use of ADR.

We distributed a Commission contracting guide which provides information and sample forms and letters.

General Litigation, Office of General Counsel: We recently completed internal policies governing the appropriate use of ADR in litigated workplace disputes. During FY 2000, we plan to train our General Litigation attorneys in ADR advocacy and to track our experiences using in-house, administratively-annexed and private neutrals.

Administrative Grievance: We created a new administrative grievance program that strongly encourages the use of ADR. In the informal stage of the grievance process, employees may elect mediation (by an internal or external neutral) or proceed through traditional grievance procedures. In the formal stage, disputes are resolved through use of a peer panel facilitated by a neutral.

What ADR programs has your agency expanded or improved during FY 1999?

EEO Office: During the past year, we enhanced our EEO ADR program. Several internal EEO staff members took formal mediation training. The Commission's Deputy Dispute Resolution Specialist has been mentoring these staff members by co-mediating cases in the Interagency Sharing of Neutrals program. We have reviewed and improved our forms and have begun discussing ways to obtain more "buy-in" from the staff.

What benefits has your agency received from these programs?

In each of the new programs, we have had insufficient experience to gauge benefits accurately. We will monitor our ADR experiences over FY 2000 to gain a better understanding of how ADR will be most effective at the Commission.

In the EEO ADR program, many managers and employees have come to regard mediation as a useful tool to resolve workplace disputes. In a few cases, management has requested the EEO Office to provide a mediator to assist them to resolve a problem situation. The program has improved communication between the EEO Office and managers, and encouraged management use of the EEO Office as a resource. Employees also are gaining confidence in the mediation process and requesting mediation more consistently during EEO counseling.

What ADR success stories does your agency have to share with the President?

Division of Enforcement: In one matter litigated by the Commission, SEC v. International Heritage, Inc. et al., Civil Action No. 1-98-CV-0803 RWS (N.D. Ga.), the Commission was attempting to settle with a corporate defendant that was in bankruptcy. To obtain approval from the bankruptcy court for the settlement, objections by several creditors of the bankruptcy estate, another defendant, and an insurance company that had posted a surety bond in the civil action, had to be resolved. The Commission staff engaged in mediation with the relevant parties, who also mediated issues among each other. The mediations were successful. The insurance company agreed to pay over 80 percent of the face amount

of the surety bond. The other defendant agreed to a settlement of the Commission's case against him, and waived various claims he had against the bankrupt entity, and the objections of the other creditors were resolved by allowing them limited priorities for their claims against the bankrupt entity.

Contracts: Through the settlement procedures of the Department of Energy Board of Contract Appeals, the SEC and a real estate landlord were able to settle a tax and operating expense dispute without recourse to a hearing. This was a long-standing dispute that might have continued and absorbed significant resources had we not achieved settlement.

EEO Office: Three female attorneys complained that their supervisor gave preferential treatment to the male attorneys under his supervision. Specifically, they alleged that he (1) had lunch only with the male attorneys; (2) discussed cases and other work related matters with the men during these lunches; (3) gave the best assignments to the male attorneys; and (4) provided mentoring and close guidance to the male attorneys.

The EEO Office conducted a mediation between the supervisor and the female attorneys, allowing the female attorneys to express their frustration and anger. The male supervisor initially seemed surprised and perplexed - but, with the mediators' assistance, he was able to remain reasonably non-defensive and receptive. He assured the female attorneys that he did not intend to exclude them or give any preferential treatment to the male attorneys under his supervision. The supervisor agreed to take management and diversity training and to meet with the women monthly to discuss any concerns. One woman asked for and was granted a transfer to another section. However, two of the women agreed to continue to work with this supervisor. These two women have indicated that they now are happy with their working conditions. No one filed an EEO complaint.

What are your agency's ADR goals, including resources necessary for the future?

We plan to spend the coming year training staff to use ADR appropriately and to represent the Commission in ADR proceedings effectively. We will monitor our ADR use to learn whether our programs, as currently envisioned, are effective, and to use our findings to make any changes necessary to improve our ADR programs. We plan to integrate ADR processes into many of the Commission's activities, allowing us to use ADR effectively in litigated and other matters. In so doing, we hope to settle those cases that should be settled, and to use more efficiently our resources on those matters that must be litigated.

For FY 2000, we do not anticipate any major resource changes. We will continue and support the Deputy Dispute Resolution Specialist FTE, and we will ensure adequate funding for ADR training and private neutrals.

REPORT TO THE PRESIDENT ON AGENCY ADR ACTIVITIES

Agency Name: Social Security Administration

Agency Dispute Resolution Specialist and other ADR points of contact:

Michael J. Hoover
Associate General Counsel for General Law
(410) 966-5737
E-mail: michael.hoover@ssa.gov

Other Point of Contact

Daniel F. Callahan
Attorney
(410) 965-3156
E-mail: dan.callahan@ssa.gov

Does your agency have an ADR policy statement? Yes X No

What is your agency's ADR budget? \$ N/A

If you do not have a budget, how are your ADR activities funded?

SSA has a number of operating components utilizing ADR techniques. As a result, SSA does not have a specific budget devoted to ADR activities. Instead, the operating components utilizing the ADR activities allocate budgetary and other resources for ADR activities as needed. For example, SSA's Office of Civil Rights and Equal Opportunity (OCREO) has initiated a pilot program to use ADR to resolve employment disputes. This pilot is funded through OCREO's budget allocation.

How many FTE's does your agency dedicate to ADR?

If none, how are your ADR activities staffed?

Similar to the response about SSA's ADR budget above, each component utilizing ADR is responsible for assigning the necessary resources to accomplish the Agency's ADR objectives. Although SSA does not directly assign FTEs for ADR activities, each component ensures suitable staffing to complete its ADR activities.

What programs has your agency established during FY 1999 pursuant to the Administrative Dispute Resolution Act and the President's directive to promote greater use of ADR?

SSA's previous ADR program was in its initial stages. As a result of the Act and the President's directive, SSA has centered its ADR activities in three main areas: complying with specific requirements of the Act, awareness training of relevant SSA staff, and establishing ADR programs in different areas

including employment disputes. In the area of compliance with the Act, SSA appointed the Associate General Counsel for General Law as the Agency Dispute Resolution Specialist (DRS). Since appointment, the DRS has acted as an ADR advocate and mentor to various SSA components whose programmatic activities could benefit from a greater use of ADR techniques. The DRS has conducted briefings, educational programs, and distributed ADR materials throughout SSA to encourage the use of ADR techniques. Further, the Agency has adopted an Agency ADR policy statement, which will be distributed throughout the Agency's senior leadership and those components that can benefit from the use of ADR techniques, to encourage the use of ADR.

In the area of training, SSA has:

Sent executive and staff representatives to participate on the Interagency Working Group on ADR. Representatives from the Office of the General Counsel and Office of Human Resources attended the Interagency Working Group kick off. Representatives from the Office of Labor-Management and Employee Relations, OCREO, and the Office of General Counsel participated on the subgroup on workplace disputes; representatives from the Office of the General Counsel and the Office of Inspector General participated on the subgroup on civil enforcement; and representatives from the Office of the General Counsel and Office of Acquisition and Grants participated on the subgroup on contracts disputes.

Provided ADR training for SSA managers and staff responsible for resolving contract disputes, civil monetary penalties, and labor-management and other employment disputes. The training was directed at employees who are most likely to use ADR in the course of their work.

Conducted a presentation for SSA's most senior level managers to instill in them a working knowledge of the Act and the President's directive so that they can ensure that ADR's principles are at work in their organizations.

As for implementing ADR programs, ADR techniques have been used for collective bargaining and labor-management partnerships. SSA has engaged in extensive partnership training that emphasizes interest based bargaining and mediated solutions as alternatives to statutory based processes to resolve labor-management disputes. A specific ADR program has been designed and implemented for resolving disputes arising at SSA's National Partnership Council. Additionally, the Office of Acquisition and Grants takes advantage of established ADR programs offered by the General Accounting Office and the General Services Board of Contract Appeals. Finally, for employment discrimination complaints, OCREO has just completed negotiations with its union partners on implementing a pilot program to use ADR to help resolve employment disputes alleging discrimination. This pilot will use mediation, if the parties desire, at both the informal and formal stages to attempt to resolve disputes early in the administrative complaints process. Additionally, the pilot will also test the use of a neutral fact finder at the formal stage of the administrative complaints process. SSA plans on using the results of this pilot program to help create a national ADR program to promote early resolution of certain complaints of employment discrimination, and to minimize the Agency's and complainant's expense of time and money on these issues.

What ADR programs has your agency expanded or improved during FY 1999?

See our discussion above. Also, SSA's practice has always been to utilize ADR in appropriate cases. SSA has used ADR techniques in cases before the General Services Administration Board of Contract Appeals, General Accounting Office, Federal Labor Relations Authority, Merit Systems Protection Board, and the Equal Employment Opportunity Commission, as well as in cases in the various Federal courts. In FY 1999, SSA has continued to rely on the ADR provided by these fora. In some cases, both parties have agreed to use ADR. In others, SSA has suggested the use of ADR but the other party has declined its use.

Further, in the labor relations area, SSA has been proactive in utilizing interest-based bargaining with its union partners. SSA also has long used various ADR techniques such as arbitration and mediation to resolve labor relations disputes. These efforts have continued in FY 1999. For disputes with employees excluded from the bargaining unit, SSA has in effect ADR procedures for these employees to resolve their disputes.

What benefits has your agency received from these programs?

In the labor and employee relations arena, SSA has seen a marked improvement in its relationship with its union partners. Although SSA is just beginning its work to establish a successful ADR program in the equal employment opportunity area, SSA believes that a successful program will minimize the number of discrimination complaints that require a formal complaint and a hearing. Obviously, not every dispute can be resolved through the ADR process, especially when both parties are not amenable to using ADR. However, SSA foresees using ADR as a tool for willing participants to successfully resolve disputes.

What ADR success stories does your agency have to share with the President?

In the area of labor-management relations, SSA has seen a marked improvement in its labor relations environment. A substantial reason for this improvement is SSA's successful use of interest based bargaining and labor-management partnerships.

What are your agency's ADR goals, including resources necessary for the future?

Again, SSA's operating components ensure that sufficient resources are devoted to each component's ADR activities. SSA plans to increase awareness and use of ADR in appropriate cases throughout the Agency. Moreover, SSA expects that a vibrant ADR program in the labor-management relations area will continue to produce future benefits as it has in the past. Further, as we stated above, SSA is optimistic with regard to the benefits that will be obtained through implementation of ADR techniques in the employment discrimination area. Finally, SSA's Office of Inspector General (OIG) recently provided greater resources to enforce statutory civil monetary penalty cases. In a pending civil monetary penalty case, OIG has proposed the use of a structured ADR technique (arbitration) to attempt resolution short of formal litigation. Future enforcement cases of these types may also be amenable to settlement in lieu of formal litigation.

REPORT TO THE PRESIDENT ON AGENCY ADR ACTIVITIES

Agency/Bureau: U.S. Department of State

ADR Specialist Name: Jody Lee
Phone: 202-261-8179
Email: leejb@state.gov

Other ADR POC Name: n/a

Does your agency have an ADR policy statement: Yes

ADR budget: 0

How are ADR activities being funded:

From the general Office of Employee Relations budget. Only items funded are DR Specialist's training and travel. Outside trainers hired once out of general Bureau of Personnel budget.

How many FTEs: 1

How are ADR activities staffed:

Plus mediators acting as a collateral basis.

What programs has your agency established:

None, program already in existence.

What ADR programs has your agency expanded:

Increased the use of mediation in the early, informal stage of disputes. ADR used before the EEO or Grievance mechanisms are engaged.

What ADR programs has your agency expanded:

Increased the use of mediation in the early, informal stage of disputes. ADR used before the EEO or Grievance mechanisms are engaged.

What benefits has your agency received:

Early resolution of disputes. Financial, productivity, and emotional gains by not having long-lasting acrimonious disputes in the workplace.

What ADR success stories:

Increased awareness of ADR results in employees taking more ownership of their disputes and trying to resolve them on their own. Conflict management training improving workplace environment.

What are your agency ADR goals: Would like to see a strong statement of support for ADR from Agency head, so that it would be more acceptable within Agency culture for managers to use ADR program to resolve issues. Some feeling now that it is a sign of weakness to need an outside person help resolve problems in the office. An ADR budget would help by providing funds for outside trainers and to help the program to be taken more seriously.

REPORT TO THE PRESIDENT ON AGENCY ADR ACTIVITIES

Agency Name: U.S. Information Agency (with the passage of recent legislation, USIA will be abolished and integrated into the Department of State no later than October 1, 1999).

Agency Dispute Resolution Specialist and other ADR points of contact:

Points of contact regarding the information on this survey and future working group matters:

C	Terry M. Hagans	202-619-4858	thagans@usia.gov
C	Lorie Nierenberg	202-619-6084	lnierenb@usia.gov

Does your agency have an ADR policy statement?

USIA has not signed the referenced ADR Declaration of Policy or published an ADR Policy at the Agency level. This matter is under consideration within the context of our upcoming integration into the Department of State. However, USIA has long relied on the use of alternate means of dispute resolution through various ADR programs as discussed below. These predate the Administrative Dispute Resolution Act of 1996 and the Presidential Memorandum of May 1, 1998, implementing that Act.

Our Office of Contracts, Office of Civil Rights and Labor and Employee Relations Division all have informal training programs. The Director of the Office of Contracts has taught ADR for the National Contract Management Association and has provided on-the-job training to contracting officers who work for him. Staff members of all three offices have also participated in various off-site training in ADR methods and techniques.

USIA does not have a reporting system.

What is your agency's ADR budget?

If you do not have a budget, how are your ADR activities funded?

USIA does not have an ADR budget per se.

The Office of Contracts has an informal listing of neutrals based on past experience. They also have a sample contract format based on material in the National Contract Management Association training course manual. That model contract is based on a sample by CPR Dispute Resolution. In addition, a few Agency employees not attached to any office already mentioned herein have received training in ADR techniques and their expertise is available as necessary, particularly in workplace issues.

USIA has ADR programs in the following areas:

All contract disputes which cannot be resolved by the contracting officer are considered for potential ADR dispute resolution by the Agency Procurement Executive, the ADR point of contact for procurement matters. If ADR appears appropriate, the contracting officer is advised to recommend or propose the matter to the contractor. If the parties agree, an ADR agreement is drafted by principals

with review by counsel. All ADR agreements are subject to review by the Office of General Counsel, and generally their concurrence is sought before ADR is proposed. The Agency has not had an appeal filed at the Board of Contract Appeals in the last 7 years.

Regarding bid protests, the Agency has an internal Agency protest procedure where any potential protestor is offered the opportunity to file its protest first with the Agency, where it will be considered by the Agency Procurement Executive, using GAO cases as guidance. Decisions are generally made within one to two weeks.

In EEO cases, the ADR process is initiated during the informal complaint period when, in the initial counseling session, the complainant may elect to pursue mediation as an alternative means to quickly settle the complaint. When the complainant opts for mediation, the Office of Civil Rights is authorized to extend the informal complaint period for up to an additional 60 days to accomplish the mediation. The Office of Civil Rights selects the mediator who explains to the parties how he or she will conduct the mediation process. A dispute may be resolved by the complainant's voluntary withdrawal of the allegations or by the parties agreeing to a settlement. In the latter event, the mediator prepares a written settlement agreement for the parties signature. If issues remain unresolved, the mediator issues a final interview letter, and the complainant may then file a formal complaint.

In the labor and employee relations arena, neutral factfinding is the most common type of ADR used. In the case of grievances, the Labor Relations staff will interact as appropriate with their counterpart union representatives and/or grievants and with relevant managers or supervisors to determine the facts of a case and identify underlying issues and interests. In the process the Labor Relations staff will often serve as mediator for the parties, meeting separately or in joint sessions depending on the nature and stage of the case. The outcome of this process is that the vast majority of grievances are resolved at the lowest possible level and extremely few grievances are referred to independent third parties for further processing. In the case of the broad range of possible collective bargaining negotiations, the Labor Relations staff and its union counterparts engage in and adhere to the principles of interest-based bargaining. As a result we achieve negotiated agreements, formally and informally, without third-party interventions.

Associated with the Labor Relations staff is the Agency's EAP Program, the Advisory, Referral and Counseling Service. One of the functions of ARCS is to mediate workplace misunderstandings or conflicts when called upon by interested individuals or work units. And, finally, one of the Agency's Bureaus, International Broadcasting, is serviced by an ombudsman.

Depending on the office, assistance would be most useful in marketing or training.

What are your agency's ADR goals? Each ADR program seeks to reduce formal complaints. Each program has the necessary resources, its trained staff.

REPORT TO THE PRESIDENT ON AGENCY ADR ACTIVITIES

Agency name: Department of Transportation

Agency Dispute Resolution Specialist and other ADR points of contact:

Name: Judith S. Kaleta

Telephone: 202-493-0992

Email: judy.kaleta@rspa.dot.gov

The Department's Dispute Resolution Specialist serves as the Chair of the Department's Dispute Resolution Council, which is comprised of the Deputy Dispute Resolution Specialists in the Department's operating administrations and secretarial offices. Those contacts are listed in Attachment 1 to this survey.

Does your agency have an ADR policy statement? Yes x No

The Secretary has issued two declarations of his commitment to ADR. One announcement was internal to the Department, addressed to heads of operating administrations and secretarial officers. The other was in a press release announcing the appointment of the Dispute Resolution Specialist and the establishment of the Department's Dispute Resolution Council. In addition, the Department's acquisition regulations include a provision on alternative dispute resolution and the role of the Dispute Resolution Specialist. 48 C.F.R. § 1233.214. The Department's Board of Contracts Appeals rules of procedure provide two alternative dispute resolution methods to facilitate case settlement: settlement judges and mini-trials.

The Federal Aviation Administration (FAA) announced commitment to the early and expeditious resolution of controversy in its Acquisition Management System. In addition, for complaints of discrimination, the FAA established an alternative dispute resolution program.

In Commandant's Instructions, the Coast Guard established a Solicitation Ombudsman Program to provide potential offerors an opportunity to resolve complaints and concerns in an informal manner and established a mediation program to resolve allegations of discrimination.

What is your agency's ADR budget? None

If you do not have a budget, how are your ADR activities funded?

There is no centralized ADR budget within the Department. ADR service and activities, including training, travel and mediators, are funded by the office requesting the service or by the office that employs the person involved in the dispute. In addition, employees are taking advantage of no-cost and low-cost training activities of the Interagency ADR Working Group and bar associations.

How many FTE's does your agency dedicate to ADR? 9 ½

If none, how are your ADR activities staffed?

The Department's Dispute Resolution Specialist and 8 ½ positions within the Federal Aviation Administration are dedicated to ADR. Sixteen employees serve on the Department's Dispute Resolution Council. There are collateral duty mediators who are involved in resolving EEO complaints. These collateral duty mediators are located in headquarters and the regional offices.

What programs has your agency established during FY 1999 pursuant to the Administrative Dispute Resolution Act and the President's directive to promote greater use of ADR?

The Department has undertaken a number of ADR initiatives in FY 1999.

The Secretary has established a Dispute Resolution Council, consisting of representatives from each of the Department's operating administrations and secretarial offices. The council will examine how the department is currently using alternative means of dispute resolution, both at headquarters and in the regions, and will identify possible future uses.

The Department, under its ONE DOT initiative to encourage its administrations to work more closely together, has been developing a DOT-wide mediation program to help resolve Equal Employment Opportunity complaints. The department has trained employees to serve as neutral mediators to assist in the consensual resolution of those complaints. We have established a pilot DOT-wide Sharing Neutrals Program for the mediation of discrimination complaints in the Washington, DC area. The U.S. Coast Guard and the Federal Aviation Administration (FAA) also established mediation programs for discrimination complaints.

The FAA also established two new programs at its William J. Hughes Technical Center in Atlantic City, N.J., under which employees and management mediate workplace disputes. One program includes the bargaining unit employees of the American Federation of Government Employees, Local 200. The other involves the non-bargaining unit employees.

The FAA and the National Air Traffic Controllers Association (NATCA) established an ADR Working Group. NATCA represents approximately 25,000 air traffic employees. The ADR Working Group will explore the use of joint problem solving efforts, including the issues and processes appropriate for these efforts.

What ADR programs has your agency expanded or improved during FY 1999?

The Secretary of Transportation has appointed a full-time Dispute Resolution Specialist. Prior to this appointment, the functions of the Dispute Resolution Specialist were a collateral duty.

The Department's Federal Aviation Administration (FAA) issued a final rule which details the procedural requirements for the resolution of both bid protests and contract disputes. Its dispute resolution process emphasizes the use of ADR as the primary means to resolve disputes. The Office of Dispute Resolution for Acquisitions makes its Dispute Resolution Officers available as ADR neutrals

with the concurrence of the parties. In addition, it established a web site, which includes a guide to the conduct of protests and contract disputes and information about specific cases.

The Coast Guard is continuing to consider alternative means of dispute resolution in procurement matters. To enhance employee awareness, the Coast Guard provided training to the chiefs of its contracting offices and its procurement attorneys.

What benefits has your agency received from these programs?

In general, ADR is working to resolve contracting and workplace disputes, resulting in less adversarial relationships and a better work environment. Employees who have been made aware of ADR are routinely beginning to see it as a desirable alternative to traditional, more adversarial approaches and are considering whether ADR may be appropriate to resolve disputes. The Coast Guard has experienced a drop in the number of contract protests.

More specifically, the informal procedures established the FAA's Office of Dispute Resolution for Acquisitions save the agency and outside parties time and money by forcing the parties to focus on the core dispute and by providing expedited time frames. An analysis, provided as Attachment 2, illustrates the estimated savings in labor hours from using default adjudication procedures in lieu of a protest under General Accounting Office procedures or a case with Board of Contract Appeals.

Other Department-wide initiatives are too new to assess at this time. We are developing criteria to help us evaluate their benefits for FY 2000.

What ADR success stories does your agency have to share with the President?

Our successes fall within several areas: design success, implementation success, and success in resolving disputes.

Design Success A team of employees from across the Department worked together to establish a Sharing Neutrals Program. The neutrals will serve as collateral duty mediators to resolve discrimination complaints. This approach allows us to use our resources in the most cost effective manner and instills within our workforce conflict management techniques.

Implementation Success The Department's Board of Contract Appeals used alternative means of dispute resolution, including mini-trials and appointment of an independent neutral, in seven cases. Settlement was reached in six of the cases.

For discrimination complaints, the Federal Aviation Administration mediated 123 disputes. Mediation resulted in resolving 71 of the disputes, 58% of the cases. This resolution rate is up from 43% in 1998. With regard to other workplace issues, one office within the FAA has established an Early Resolution System and successfully resolved 16 out of 18 cases.

Success in resolving a dispute One case that benefitted from the application of ADR involved a contract for the construction of a power supply upgrade at a Coast Guard facility. Differing site positions were encountered and delays extended the contract almost one year beyond the original completion date. The contractor filed a claim for approximately \$224,000 for extended unabsorbed overhead expenses. The parties attempted to settle and failed. Both parties presented arguments and evidence to a settlement judge from the Department's Board of Contract Appeals. The settlement judge made informal recommendations to the parties. The claim was settled for \$70,000.

What are your agency's ADR goals, including resources necessary for the future?

Our primary goal is to publish a notice in the Federal Register which details our commitment to ADR as part of the Department's strategic plan. Consistent with our human resources management strategy to foster a diverse, highly skilled workforce, we will develop a curricula to enhance awareness of opportunities to use ADR and we will establish a nation-wide mediation program to resolve complaints of discrimination. This latter undertaking also supports labor-management partnerships. Consistent with our customer service corporate management strategy, we will develop ADR program evaluation criteria. In addition, to ensure that customers have access to timely and accurate information, we will develop an ADR web site. As we undertake these and other ADR initiatives, under the leadership of the Department's Dispute Resolution Council, we will ensure that fiscal resources are cost-effectively allocated.

REPORT TO THE PRESIDENT ON AGENCY ADR ACTIVITIES

Agency name: Research and Special Programs Administration (Transportation)

Agency Dispute Resolution Specialist and other ADR points of contact:

Name: Helen Hagin

Telephone: (202)366-9638

Email: Helen.Hagin@rspa.dot.gov

Name: Jennifer Karim

Telephone: (202)366-0697

Email: Jennifer.Karim@rspa.dot.gov

Name: Scott Holland

Telephone: (202)366-0002

Email: Scott.Holland@rspa.dot.gov

Does your agency have an ADR policy statement? Yes__ No_X_

What is your agency's ADR budget: None

If you do not have a budget, how are your ADR activities funded?

The RSPA Office of Civil Rights paid for the mediation training given to a RSPA employee who is a participating member of the DOT pool of shared neutrals. There are no other ADR activities requiring funding at the present time.

How many FTE's does your agency dedicate to ADR? 0

If none, how are your ADR activities staffed?

RSPA participates in the DOT Shared Neutrals Program by designating one RSPA employee to be an active member of the pool of shared neutrals. The pool of shared neutrals is made up of DOT employees who have received training in mediation and who mediate conflicts in agencies outside the agency they are employed in, when necessary.

What programs has your agency established during FY 1999 pursuant to the Administrative Disputes Resolution Act and the President's directive to promote greater use of ADR?

RSPA actively participated on the ONE DOT Steering Committee, which was established to create a plan for incorporating ADR into the existing EEO complaints procedure in DOT agencies.

What ADR programs has your agency expanded or improved during FY1999?

None, other than providing mediation training to the RSPA employee who is participating on the DOT pool of shared neutrals.

What benefits has your agency received from these programs?

None yet, as far as using ADR techniques in real conflict situations is concerned. However, a RSPA employee received mediation training in preparation for using it to resolve discrimination complaints.

What ADR success stories does your agency have to share with the President?

None at the present time.

What are your agency's ADR goals, including resources necessary for the future?

None at the present time.

REPORT TO THE PRESIDENT ON AGENCY ADR ACTIVITIES

DEPARTMENT OF THE TREASURY

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DEPARTMENTAL OFFICES

Bureau Name: Departmental Offices, U.S. Department of Treasury

ADR point of contact:

Name:	Sandra Heaton
Telephone:	202/622-0831
FAX:	202/622-2626
Email:	Sandra.Heaton@DO.treas.gov

Do you have an ADR policy statement? Yes. See attached.

What is your bureau's ADR budget?

If you do not have a budget, how are your activities funded? Departmental Offices does not have a budget for its ADR program. However, DO utilizes the Treasury Shared Neutrals Program which provides mediators at no cost to DO.

How many FTE's does your bureau dedicate to ADR? 1 FTE (Collateral duty).

What programs has your bureau established during FY 1999 pursuant to the Administrative Dispute Resolution Act and the President's directive to promote greater use of ADR?

There were no new programs established. However, in connection with any workplace dispute arising at DO, the use of ADR was offered and encouraged.

What ADR programs has your bureau expanded or improved during FY 1999? *None.*

What benefits has your bureau received from these programs?

ADR provides a useful alternative to the administrative grievance and EEO discrimination complaint process.

What ADR success stories does your bureau have to share with the President?

None at this time.

What are your bureau's goals, including resources necessary for the future?

Among the goals of DO's ADR program is to increase employee/managerial knowledge of the ADR Program and expand the use of ADR to handle communication/employee dissatisfaction issues.

Bureau name: Office of the Inspector General

Bureau Dispute Resolution Specialist: None

Other ADR Point of Contact:

Name: Bobbie Sisselberger, EEO Officer
Telephone: (202) 927-5759
Fax: (202) 927-5422
Email: SisselbergerB@oig.treas.gov

Name: Catherine McCoy, Personnel Officer
Telephone: (202) 927-5230
Fax: (202) 927-5422
Email: McCoyC@oig.treas.gov

Name: Rich Delmar, Acting Counsel
Telephone: (202) 927-0650
Fax: (202) 927-5418
Email: DelmarR@oig.treas.gov

Does your bureau have an ADR policy statement?

No, the OIG does not have a policy statement. However, it has a draft ADR policy that it expects to issue by 1-1-2000, when it will be offering ADR to EEO complainants as required by revised EEOC regulations at 29 CFR Part 1614.

What is your ADR budget? If you do not have a budget, how are your ADR services funded?

The OIG's ADR program will be funded through the budget for EEO/Human Resources. Since ADR is a new program, no baseline data exist on which to project FY 2000 costs. The costs will be based on the per hour cost of ADR services obtained from the Department or other entity.

How many FTE's does your bureau dedicate to ADR? If none, how are your ADR activities staffed:

The OIG devotes part of an FTE to ADR. Both the EEO Officer and the Personnel Officer have program administration responsibilities (e.g., marketing ADR to employees and managers, coordinating external mediation services, evaluating program, and revising guidance and procedures). ADR techniques can be used both in resolving employee relations disputes and in the EEO area. ADR neutrals will be obtained through an Economy Act agreement and/or contract basis.

What programs has your bureau established during FY 1999 pursuant to the Alternative Dispute Resolution Act and the President's Directive to promote greater use of ADR?

The OIG worked on finalizing its ADR policy during FY 1999.

What ADR programs has your bureau expanded or improved during FY 1999?

Not applicable.

What benefits has your bureau received from these programs?

Not applicable.

What ADR success stories does your bureau have to share with the President?

Although the OIG has not finalized its ADR policy, it has participated in ADR in the EEO process through the EEOC's mediation program. With the assistance of a mediator assigned by the EEOC, the OIG was able to amicably resolve an EEO complaint involving employment issues that took place in 1996.

What are your bureau's goals, including resources necessary for the future?

The OIG expects to have its ADR policy in place by 1-1-2000. This policy will address both employee relations and EEO issues. ADR can be extremely effective in resolving employee relations type disputes (e.g., both before and after grievances are filed). The OIG anticipates that it will have somewhat equal activity in both program areas.

Bureau Name: Bureau of Alcohol, Tobacco and Firearms

Bureau Dispute Resolution Specialist and other ADR points of contact:

Name: Toby Bishop

Phone: 202-927-7760

Fax: 202-927-8835

E-mail: *tfbishop@atfhq.atf.treas.gov*

Name: Stan Zimmerman

Phone: 202-927-6450

Fax: 202-927-0006

E-mail: *sezimmerman@atfhq.atf.treas.gov*

Does your bureau have an ADR policy statement? Yes ☒ No ☐

What is your bureau ADR budget? No line item in the budget for ADR.

If you do not have a budget, how are your ADR activities funded?

a) EEO ADR is funded through a reimbursable agreement with the Federal Mediation and Conciliation Service in the amount of \$10,000 per year. ATF also uses no cost sources of neutrals to include the Treasury Sharing Neutrals Program and the Government-wide Sharing Neutrals Program.

b) The Ombuds program utilizes the services of ATF employees trained in mediation and other dispute resolution methods. The program has an operating budget of \$20,000.

How many FTE's does your bureau dedicate to ADR?

a) EEO:

30 collateral duty EEO counselors (up to 10% of time allocated to resolving EEO complaints at the informal stage)

one full time EEO specialist/counselor/ADR program manager

(new position as of 11/21/99); previously 1/5 FTE for program management.)

b) Ombuds Program:

5 FTE's

What programs has your bureau established during FY 1999 pursuant to the Administrative Dispute Resolution Act and the President's directive to promote greater use of ADR?

Created a new full time counselor position in the EEO office to handle EEO complaints at the informal stage of the process.

What ADR programs has your bureau expanded or improved during FY 1999?

Currently in the process of converting a pilot ADR program for handling EEO complaints into a permanent program;

Requested increased funds for providing in-depth training of supervisors and managers in ADR techniques;
Continuous training of ADR staff in alternative methods of dispute resolution;
Ongoing training of supervisors and employees in the benefits of ADR;
Serve on Treasury steering committee for Sharing Neutrals Program;
Provide mediation services to other bureaus and departments for EEO and other types of disputes;

What benefits has your bureau received from these programs?

Prevented a number of EEO concerns from being filed as complaints;
Increased employee morale in cases where the concern was resolved successfully;
Savings in terms of funds not expended to investigate or litigate EEO complaints;
Recognition by the Department for one of our senior managers for his role in promoting ADR. He received Treasury's EEO Employee of the Year Award.
Where ADR was successful, employees did not file other complaints.
Ombuds program serves as an alternative to the formal grievance process, giving employees who do not wish to file grievances an outlet for their concerns;

What ADR success stories does your bureau have to share with the President?

In one case, a female employee felt that she did not receive the recognition she deserved for performing her job in an exemplary fashion over a long period of time. She was angry and frustrated by, what she considered, her supervisor's disregard of her expertise and qualifications. She filed a complaint claiming disparate treatment based on her sex. She changed jobs, but continued to be extremely hurt over the alleged treatment by her former supervisor. A settlement agreement was finally reached whereby the Assistant Director of her former directorate wrote her a letter of appreciation citing her superior contributions to the project and her dedication to the bureau. She withdrew her complaint and is happy in her new position.

In another case, an employee felt that she was being subjected to a hostile work environment based on her sex and race. She documented a history of disparate treatment by her supervisor. She sought EEO counseling and agreed to participate in mediation. As a result of the mediation, her entire office (a large ATF installation) was to receive EEO, diversity, and sexual harassment training. In addition, a follow-up meeting among all parties, including the mediator, was scheduled to ensure compliance and understanding of the terms of the agreement. A small monetary amount was also provided for her out of pocket expenses in pursuing the EEO process. The employee withdrew her complaint and has not filed another. The EEO and diversity training was welcomed by most employees; the remainder of the training will be conducted in January 2000.

Approximately 10 percent of the Bureau's employees took advantage of the Ombuds programs in FY 1999.

What are your bureau's goals, including resources necessary for the future?

Training in ADR for all supervisors and managers, including how to mediate workplace disputes themselves so the matter is less likely to become an EEO complaint or grievance.

Expansion of the full time counselor concept to eventually have one in each of our five regions. This will enhance our resolution ability by concentrating training and expertise in fewer individuals whose job it will be to resolve complaints. This will also reduce the need for collateral duty EEO counselors.

Require counselors to provide potential EEO complainants with comprehensive information about mediation benefits before complainants are required to elect whether to utilize mediation or traditional counseling. Require counselors to document their discussions about ADR with complainants.

Bureau Name: Office of the Comptroller of the Currency

Bureau Dispute Resolution Specialist and Other ADR Points of Contacts:

David C. Douglas
Telephone: (202) 874-5360
Fax: (202) 874-5629
Email: david.douglas@occ.treas.gov

Victor L. Gilbert
Telephone (202) 874-5779
Fax: (202) 874-5779
Email: victor.gilbert@occ.treas.gov

Does Your Bureau Have an ADR Policy Statement?

Yes _____ No X

ADR policy statement is in draft.

What Is Your Bureau ADR Budget?

The OCC ADR annual budget is \$45,000.

How Many FTE's does your bureau dedicate to ADR? 2

OCC's Equal Employment Programs, Director is the Alternative Dispute Resolution Program Manager (ADR PM) and an EEO Specialist are dedicated to the OCC's ADR program as an additional duty.

What programs has your bureau established during FY 1999 pursuant to the Administrative Dispute Resolution Act (ADRA) and the President's directive to promote greater use of ADR?

OCC is designing an ADR program to be implemented on January 1, 2000. In support of the ADRA and the President's directive the OCC has accomplished the following:

- (1) Arranged for the procurement of contract mediation services.
- (2) Designed mediation publications.
- (3) Wrote a news article for *Supervision* newsletter announcing the implementation of the ADR program.
- (4) Developed guidelines and procedures for OCC's mediation program.

What ADR programs has your bureau expanded or improved during FY 1999?

The OCC Ombudsman program has assumed responsibilities for supervision and administration of OCC's customer assistant functions to handle customer dissatisfaction with banking services. The Ombudsman developed a feedback form to assess how well the agency is meeting its goals and services to the employee.

What benefits has your bureau received from these programs?

Over the past three years the Ombudsman office received 282 contacts that were resolved without the filing of a formal complaint, which results in a reduction of the filing of formal complaints.

What ADR success stories does your bureau have to share with the President?

Two (2) EEO workplace disputes have been successfully mediated since the agency began the development of an ADR program.

What are your bureau's goals, including resources necessary for the future?

OCC's goals include the implement of the bureaus ADR program.

In addition to establishing an ADR program within the bureau, OCC plans to join in the Department of Treasury's Shared Neutral Program. OCC will train employees to mediate disputes for all Treasury Bureaus. Also, OCC plans to continually fund its established ADR program.

Bureau Name: United States Customs Service

The ADR point of contact for Customs is:

Andrew Pizzi
Phone: 202-927-0585
Fax: 202-927-1476
E-mail: andrew.r.pizzi@customs.treas.gov.

Does your agency have an ADR policy statement?

Customs does not have an ADR policy statement. However, Customs has a Memorandum of Understanding with NTEU for the resolution of EEO complaints.

What is your agency's ADR budget?

Customs has a training budget.

How many FTE's does your agency dedicate to ADR?

One full time FTE dedicated to the program.

One full time FTE is dedicated to ADR.

What programs has your agency established during FY 1999 pursuant to the Administrative Dispute Resolution Act and the President's directive to promote greater use of ADR?

Customs established a cadre of trained employee mediators. Our negotiated ADR program was only implemented about one month ago.

What benefits has your agency received from these programs?

At this time, it is difficult to assess the benefits from the Customs ADR program as Customs has only been tracking the negotiated ADR program for about one month. However, generally, Customs believes that ADR will resolve disputes more quickly and improve communications between employees and management.

Bureau Name: Bureau of Engraving and Printing (BEP)

Bureau Dispute Resolution Specialist and other ADR points of contact:

Name: Bruce Crouch, Senior ADR Official
Telephone: (202) 874-3743
FAX: (202) 874-3066
E-mail: Bruce.Crouch@BEP.TREAS.GOV

Name: Linda Bradford Washington, Senior ADR Specialist
Telephone: (202) 874-6046
FAX: (202) 927-1817
E-mail: Linda.Washington@BEP.TREAS.GOV

Does your bureau have an ADR policy statement? Yes X No___

What is your bureau ADR budget?

The BEP has an established budget and resources for the ADR program. The ADR budget is **\$240,000**. One Senior Alternative Dispute Resolution Specialist (GS-14), one Alternative Dispute Resolution Specialist (GS-11/12) and one ADR Administrative Assistant (GS-5/6/7) staff the BEP ADR program. Resources for salaries, supplies, training, equipment and other office items are contained in the ADR budget.

If you do not have a budget, how are your ADR activities funded?

Not Applicable

How many FTE's does your bureau dedicate to ADR? 3

If none, how are your ADR activities staffed?

Not Applicable

What programs has your bureau established during FY 1999 pursuant to the Administrative Dispute Resolution Act and the President's directive to promote greater use of ADR?

Alternative Workforce Training - The ADR Staff and Steering Committee designed a training course on video as an alternative training method for production and shift employees. The training enhanced educational opportunities for employees and supervisors who are not able to attend regularly scheduled training by providing training and audiovisual presentations on ADR on the Bureau News Network (Washington, DC) and Target Vision (Fort Worth, Texas).

Sharing Resources Program - The ADR Staff offers mediation training to other Treasury Bureaus and Federal Agencies e.g. Treasury Departmental Offices, Internal Revenue Service, Financial Management Service, U.S. Customs, Federal Aviation Administration, National Institutes of Health and the General Accounting Office. This enables small Bureaus and Agencies an opportunity to provide quality mediation skills training to employees selected to be internal mediators at little or no cost.

ADR Summer Intern Program - The ADR Staff worked very closely with EEO to assist in the success of the Treasury Partners in Education program at BEP. During the summer of FY1999 two students from Banneker High School were provided the opportunity to be employed on the BEP ADR Staff. The students are members of the Banneker High School Peer Mediation Program. The ADR Staff/Committee assisted in the development of a Peer Mediation Program for Benjamin Banneker Academic High School. The purpose of the program is to provide students with peer mediation training and mentoring needed to become skilled Peer Mediators. The program provides an opportunity for the BEP Mediators to gain additional practical experience. The students assisted with administrative support and designed an ADR newsletter for Banneker High School and the BEP ADR Staff.

Police Officer's Conflict Resolution Training - The ADR Staff designed a Conflict Resolution training course for the BEP Police Force. Over 40 BEP Police Officers have completed the ADR Conflict Resolution training. As a result of the training, several Police Officers have expressed an interest in becoming a Treasury Mediator.

Mediator Forum - The ADR Staff is hosting a **Mediator Forum** on November 30 - December 2, 1999 - which includes a 2-day Advanced Mediation training course designed for the Treasury Program on Sharing Neutral Mediators (nation-wide) and a 1-day forum for mediators to discuss the CFR 1614 changes, mediation cost versus litigation cost, and mediation from a union perspective.

What ADR programs has your bureau expanded or improved during FY 1999?

The Alternative Dispute Resolution Staff/Committee expanded the mentoring services and system design services to less experienced mediators and bureaus and agencies seeking to establish ADR programs as follows:

a) Treasury Sharing Neutrals Program - The ADR Staff initiated and implemented the Treasury Program on Sharing Neutrals. The goal of the program is to provide high quality neutrals to Treasury Bureaus at little or no cost. The project has a pool of experienced neutrals who mentor less experienced neutrals from a variety of Bureaus on a collateral duty basis. The program has 40 Mediators nationwide representing 8 Treasury bureaus. The program presently has a **100% success rate** for the resolution of cases.

b) Mediation Services - The ADR Staff/Committee provided mediation services to support the following Treasury Bureaus and other Government agencies through the Department of Treasury Sharing Neutrals Program and the Department of Health and Human Services, Sharing Neutrals Program:

Bureau of Alcohol, Tobacco and Firearms
Department of Commerce
US Customs Service
Federal Aviation Administration
General Services Administration
US Mint
Tarrant County Court System (Texas)
Department of the Treasury, Departmental Offices

c) System Design and Implementation - The ADR Staff continues to provide ADR Systems Design overviews to Treasury Bureaus and other Federal Agencies. This provides the agencies and bureaus with benefits of on-the-job experience and training lessons learned when developing, establishing and implementing an ADR Program. ADR Overviews were provided to the following Treasury Bureaus and Government agencies, during FY1999 to assist them in the design, development and implementation of an ADR program:

Office of Government Ethics (12/98)
Internal Revenue Service (1/99)
Environmental Protection Agency (3/99)
US Patent Trade Office (7/99)
Department of Energy (9/99)

What benefits has your bureau received from these programs?

The specific positive effects that can be attributed by the ADR Program are as follows:

Improved working relationships between management and employees.
Improved working relationships between co-workers.
Improved employee morale.
Reduced expenses through BEP's traditional complaint process.
Processed a portion of BEP's disputes through the use of ADR quickly, efficiently, fairly and effectively.
Designed and developed the Treasury Program on Sharing Neutrals.
Provided mediation services to other Treasury Bureaus and Government agencies.
Assisted other Treasury Bureaus and Government agencies in the design and implementation of an ADR program.
Provided ADR outreach services to local inner city schools.

What ADR success stories does your bureau have to share with the President?

The BEP ADR Program was the recipient of the **1999 Office of Personnel Management (OPM) Director's Award for Outstanding ADR Programs**. On July 27, 1999, the BEP ADR Program was

publicly recognized by Attorney General Janet Reno and OPM Director, Janice Lachance for achieving what President Clinton envisioned in his May 1, 1998 memorandum--that ADR be part

of an effort to make the Federal Government operate in a more efficient and effective manner. The BEP Program was recognized for demonstrating a targeted investment of time and resources devoted to ADR initiatives.

The ADR program has enhanced and strengthened the Labor-Management Partnership. Successful partnering has opened the direct channels of communication for all the stakeholders involved and has created a “**Win/Win**” relationship within BEP. The ADR Program concentrated on creating a positive dispute prevention atmosphere using partnering concepts to help define common goals, foster problem-solving methods and improve communication. Our main focus is to encourage parties to change from their traditional adversarial relationships to a more cooperative approach in resolving disputes. Through the successful efforts of the ADR Pilot Project, the Joint Labor Management Partnership Council received honorable mention for the **John N. Sturdivant Partnership Award**. The award established by the National Partnership Council in 1995, recognizes and promotes outstanding and innovative partnerships throughout the executive branch.

The ADR Staff was the recipient of the **1999 BEProud Quality Achievement Award** for the establishment and implementation of the ADR Program and improving working relationships between management and employees, co-workers and improving employee morale.

The ADR Program was acknowledged in the Office of Personnel Management **ADR Partnership Handbook** as having a successful ADR program that came about through a partnership with the BEP unions.

The Bureau of Engraving and Printing's ADR Program is particularly proud of the statistics documenting its success during its two-year pilot period of January 1997 through December 1998:

- C In 1997, 82 percent of the cases were resolved successfully through mediation, and were resolved within 25 days after the dispute was brought to the attention of the ADR Staff.
- C In 1998, 94 percent of the cases processed were resolved through mediation within 15 days of bringing the dispute to the attention of the ADR Staff.

BEP's ADR Program is particularly proud of its 94 percent resolution rate during its second year of operation, as described above. The 1998 resolution rate of 94 percent, and the 1997 rate of 82 percent, both far exceed the federal agency ADR program average resolution rate of 70 percent. Currently, the ADR Program's 1999-resolution rate is 86 percent. These exceptional resolution rates can be attributed, in part, to the caliber of training that we provide to our neutrals, the inter-agency networking opportunities which vicariously helps them to improve upon their skills through the sharing of lessons learned with other federal mediators, and to the dedication and commitment of our mediators who understand the program's mission. The mission is to resolve complaints as early as possible, at the lowest level, while minimizing administrative costs. These high-resolution rates can also be attributed to the education and awareness training given to the BEP workforce, which extols the virtue of the mediation process, and places emphasis on the cost savings to the government for early resolution.

During the two-year pilot project period the ADR Program processed a total of 88 cases with an estimated cost avoidance of \$1,910,000. The cost avoidance calculations were derived by the ADR Staff based on the EEOC report which provided evidence, through the Department of Air Force study, that the average processing cost of an EEO case is approximately \$80,000. In addition the cost avoidance calculations include an estimate of \$5,000 for cases which otherwise would have to be resolved through the grievance process.

At the present time, costs savings are identified for EEO and grievances only. However as the program continues to use various ADR methods and types of cases it will be possible to evaluate cost savings from other types of cases.

What are your bureau's goals, including resources necessary for the future?

Alternative Dispute Resolution Program Objectives For FY 99 - 00

GOALS:

- Implement the Alternative Dispute Resolution (ADR) Program to ensure the Department of the Treasury and the Bureau of Engraving and Printing compliance with applicable laws, regulations and policies.
- Provide mediation services to resolve labor-management, Equal Employment Opportunity (EEO), and employee dispute resolution at the informal and formal level and avoid cost through the traditional techniques.

ANNUAL OBJECTIVES:

- **Education**
 - Present quarterly Lunch-time-Learning Seminar on ADR at the Washington, DC and the Fort Worth, Texas facilities.
 - Enhance educational opportunities for employees and supervisors by providing training and audiovisual presentations on ADR on the Bureau News Network (Washington, DC) and Target Vision (Fort Worth, Texas).
 - Complete the certification of the twenty internal BEP mediators.
 - Provide assistance to the Department of the Treasury and other agencies as requested on ADR system design and techniques.
 - Complete workforce training.

- **Collaboration and outreach**

- Continue development of EEO, ADR and LMR partnership activities.
- Implement Banneker High School Peer Mediation Program.
- Implement Department of the Treasury Sharing Neutrals Program.

- **ADR Program**

- Improve level of customer satisfaction with ADR process.
- Increase the percentage of settlements of active ADR mediation, facilitation, and consultative cases.

- **Resources**

- Obtain resources to complete workforce training.

Bureau Name: Federal Law Enforcement Training Center (FLETC)

ADR Points of Contact:

Colleen Boyette, EEO Officer
(912) 267-3316
(912) 261-4586 [fax]
cboyette@fletc.treas.gov

Randy Marcy, Ombuds
(912) 267-2660
(912) 267-2495 [fax]
rmarcy@fletc.treas.gov

Does your bureau have an ADR policy statement?

FLETC ADR Policy Statements:

EEO: It is the FLETC's policy to use ADR techniques, primarily mediation, to resolve EEO concerns at the earliest possible stage in the EEO complaint process. Accordingly, requests for EEO counseling will be evaluated to determine whether the issues presented at the pre-complaint stage would be appropriate for early resolution efforts. In order to be considered for participation in the ECRP, the concern must allege prohibited discrimination on the basis of race, color, sex, religion, national origin, age, physical or mental disability, or reprisal for engaging in prior EEO activity.

Ombuds: The mission of the FLETC Ombuds is to provide a confidential, neutral and informal process which facilitates fair and equitable resolutions to concerns that arise in the organization. In performing this mission, the Ombuds serves as an information and communication resource, upward feedback channel, advisor, dispute resolution expert and change agent.

What is your bureau ADR budget?

Concerning EEO ADR activities, the actual cost associated with ADR cannot be determined until after the first full year of implementation, which will be the end of FY 2000.

Concerning the newly created Ombuds program, the estimated budget for the first year of operation is approximately \$60,000, exclusive of a GS-14 FTE.

How many FTE's does your bureau dedicate to ADR? If none, how are your ADR activities staffed?

The only full time FTE is that for the Ombuds position. The EEO Office has an EEO Officer, eight mediators, and 14 counselors. The mediators and counselors are part-time positions whose duties

include ADR in the EEO process. The EEO Officer is a full-time position, but only a portion of her duties will be ADR related.

What programs has your bureau established during FY 1999 pursuant to the Administrative Dispute Resolution Act and the President's directive to promote greater use of ADR?

The Ombuds program was created as a direct result of both the above references. The pilot Early Complaint Resolution Program under EEO was created pursuant to EEOC guidance and requirements. However, it clearly was heavily influenced by the above references.

What ADR programs has your bureau expanded or improved during FY 1999?

The ECRP and the Ombuds program were both created during FY 1999.

What benefits has your bureau received from these programs?

Both programs are too new to have generated tangible, measurable benefits. However, the objectives of the ECRP are to:

- a. Expedite resolution of discrimination concerns at the earliest possible stage in the process.
- b. Define areas of agreement and clear up misunderstandings.
- c. Reduce costs associated with processing EEO complaints, including intangible costs, such as lowered morale or productivity; prevent litigation; and rebuild trust between the parties.
- d. Reduce stress and improve relationships.
- e. Promote creative problem-solving.

It is anticipated that the Ombuds program will yield benefits similar to b., d., and e., above.

What ADR success stories does your bureau have to share with the president?

Both programs are too new to have built up a database of success stories.

What are your bureau's goals, including resources necessary for the future?

FLETC's goals are to build upon the ADR process by creating a robust ECRP and Ombuds program and a Peer Review Council, and to spearhead across all Treasury Bureaus new and innovative ADR concepts and results.

Bureau Name: Financial Crimes Enforcement Network

Bureau Dispute Resolution Specialist and other ADR Points of contact:

Name: Stephen R. Kroll
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Name: Nicholas Procaccini
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Fax: (703) 905-3684

Email: Procan@fincen.treas.gov

Does your bureau have an ADR policy statement? Yes ☐ No ☒

What is your bureau ADR budget? \$ 0

If you do not have a budget, how are your ADR activities funded?

The involved program offices absorb the costs of ADR activities.

How many FTE's does your bureau dedicate to ADR? 0

If none, how are your ADR activities staffed?

By Office of Management personnel and people from involved program offices.

What programs has your bureau established during FY 1999 pursuant to the Administrative Dispute Resolution Act and the President's directive to promote greater use of ADR?

FinCEN plans to review, and if feasible, adopt an ADR program under development by the U.S. Customs Service, with which FinCEN has a service contract.

What ADR programs has your bureau expanded or improved during FY 1999?

FinCEN is monitoring the status of the ADR program that the Customs Service is developing.

What benefits has your bureau received from these programs? None to date.

What ADR success stories does your bureau have to share with the President? None to date.

What are your bureau's goals, including resources necessary for the future?

FinCEN would like to use ADR programs to the maximum extent feasible, however, until we understand the program that the Customs Service is developing, we will not be able to make any final determinations

Bureau Name: Financial Management Service

Bureau Dispute Resolution Specialist:

Thomas Johnson
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Fax: 974-6756
E-mail: thomas.johnson@fms.sprint.com

Does your agency have an ADR policy statement?

FMS does not have an ADR policy statement as such. However, a Memorandum of Understanding (MOU) with NTEU, for the resolution of workplace disputes, is in the approval process.

What is your agency's ADR budget?

FMS does not have a dedicated ADR budget. We intend to implement the program with NTEU on a cost-neutral basis to the greatest extent possible. For example, we will develop and use a cadre of volunteers to serve as mediators for in-house disputes, and will participate in a cost-free "shared neutrals" program. Also, we hope to utilize cost-free training facilities such as the IRS Center for Dispute Resolution.

How many FTE's does your agency dedicate to ADR?

FMS does not have dedicated FTE's. We plan to assign the resolution of in-house disputes as collateral duties to existing positions, such as LER and EEO specialists. Currently, 4 employees are involved in the program in various ways.

What ADR success stories does your agency have to share with the President?

Our ADR processes are currently under review at the Dept. Therefore, we have no success stories, apart from the negotiation of procedures with NTEU. If our labor and EEO programs are approved, we hope that they will provide an alternative to traditional adversarial processes, such as grievances and arbitrations. We also hope that we will be able to resolve a greater number of EEO complaints without resort to formal procedures, consistent with the new 29 CFR Part 1614

Bureau Name: Internal Revenue Service, Office of Chief Counsel

Agency Dispute Resolution Specialist and other ADR points of contact with respect to Tax Court litigation:

Name: Nancy Romano
Senior Technician Reviewer
Procedural Branch
Field Service Division
Tel. #: (202) 622-7940

Name: Stuart Spielman
Attorney
Procedural Branch
Field Service Division
Tel. #: (202) 622-7950

Name: Peter Reilly
Attorney
Procedural Branch
Field Service Division
Tel. #: (202) 622-7950

Agency Dispute Resolution Specialist and other ADR points of contact with respect to EEO matters:

Name: Richard J. Mihelcic
Associate Chief Counsel (Finance & Management)
Tel. # (202) 622-3330
Richard.J.Mihelcic@m1.irs.counsel.treas.gov

Name: Elaine J. Greene
Director, EEO and Diversity
Tel. # (202) 874-9680
Elaine.J.Greene@m1.irs.counsel.treas.gov

Does your agency have an ADR policy statement? Yes **X** No _____

For voluntary binding arbitration with respect to Tax Court litigation, Chief Counsel's policy is set out in the Chief Counsel Directives Manual at (35)(3)(17)(0), et seq. This portion of the Chief Counsel Directives Manual sets out the types of cases that may be appropriate for binding arbitration and the requirements that must be met for a case to be sent to arbitration.

For mediation with respect to Tax Court litigation, Chief Counsel's policy is set out in the Chief Counsel Directives Manual at (35)(3)(20)(0), et seq. This portion of the Chief Counsel Directives Manual sets out the types of cases that may be appropriate for mediation and the requirements that must be met for a case to be sent to mediation. This portion of the Chief Counsel Directives Manual also advises attorneys to look to Announcement 95-86, 1995-44 I.R.B. 27, Test of Mediation Procedure for Appeals, for guidance in the mediation process.

What is your agency's ADR budget?

There was no budget specifically for ADR in FY 99.

How many FTE's does your agency dedicate to ADR?

0 FTE's.

What programs has your agency established during FY 1999 pursuant to the Administrative Dispute Resolution Act and the President's directive to promote greater use of ADR?

Counsel has assisted IRS Appeals in completing the design of the Appeals' Binding Arbitration program which will be published as an announcement for public comment. Binding arbitration is mandated by the Internal Revenue Service Restructuring and Reform Act of 1998 (RRA 98) under new section 7123(b)(2) of the Internal Revenue Code.

What ADR programs has your agency expanded or improved during FY 1999?

Counsel had not made any changes to the ADR programs with respect to Tax Court litigation. However, Counsel has assisted Appeals concerning the expansion and improvement of their ADR programs.

What benefits has your agency received from these programs?

Use of ADR programs can result in more efficient use of judicial and IRS resources. It may also benefit the United States Tax Court by reducing that Court's inventory.

What ADR success stories does your agency have to share with the President?

Counsel has no specific ADR success stories to discuss with respect to tax litigation.

What are your agency's ADR goals, including resources necessary for the future?

Chief Counsel supports the use of ADR techniques for more efficient use of judicial and IRS resources.

Bureau name: Internal Revenue Service, National Office of Appeals

Agency Dispute Resolution Specialist and other ADR points of contact:

Name: Daniel L. Black, Jr.
National Director of Appeals
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Name: Thomas C. Louthan
Director, ADR & Customer Service
Tel. #: (202) 694-1842
Email: tclout00@ml.irs.gov

Name: Sandy Cohen
Senior Analyst, ADR & Customer Service
Tel. #: (202) 694-1818
Email: sxcohen00@ml.irs.gov

Does your agency have an ADR policy statement? Yes X No

As the Internal Revenue Service shifts toward becoming a more customer-oriented agency, the Service's commitment to the Appeals administrative dispute resolution process is reaffirmed by the recently published Policy Statement P-8-1. Also, Announcement 99-98, 1999-42 I.R.B. 520, was published about the Appeals customer service representatives and their role in encouraging the resolution of tax disputes without litigation.

What is your agency's ADR budget?

Our budget proposal for FY 2000 is \$100,000.

How many FTE's does your agency dedicate to ADR?

7 FTE's

What programs has your agency established during FY 1999 pursuant to the Administrative Dispute Resolution Act and the President's directive to promote greater use of ADR?

Binding Arbitration – IRS Appeals has completed the design of this program and will publish an announcement for public comment by the end of December 1999. Binding arbitration is jointly elected by Appeals and a taxpayer when a settlement cannot be reached during normal Appeals procedures. Binding arbitration is mandated by the IRS Restructuring and Reform Act of 1998 (RRA 98) under new section 7123(b)(2) of the Internal Revenue Code.

Tax Exempt Bond Administrative Appeal Rights - allows Issuers to request an administrative appeal of an adverse determination by the Employee Plans/Exempt Organizations Key District (District) of the tax-exempt status of a bond issue. See Revenue Procedure 99-35, 1999-41 I.R.B. 501.

What ADR programs has your agency expanded or improved during FY 1999?

We expanded our early referral program to allow any taxpayer whose return is under examination to request the transfer of an issue in dispute to Appeals, while other issues in the case continue to be developed by the district office. See Revenue Procedure 99-28, 1999-29 I.R.B.109.

We also expanded our mediation program to allow additional taxpayers, whose cases are not docketed in any court and are already in the Appeals administrative process, to request mediation as an alternative dispute resolution technique. See Revenue Procedure 98-99, 1998-46 I.R.B. 34.

What benefits has your agency received from these programs?

We're able to provide greater customer service to taxpayers by providing them additional opportunities to resolve their cases without litigation.

What ADR success stories does your agency have to share with the President?

Section 3465 of the RRA 98 created new section 7123, which codified Appeals Alternative Dispute Resolution (ADR) procedures, such as early referral, mediation and arbitration.

The early referral procedures have been used in over two hundred cases, involving over \$10 Billion.

Thirty-eight mediation requests involving approximately \$3 Billion have been made; twelve were concluded: Nine mediation cases were successfully resolved and three cases did not resolve. Seventeen mediation cases are in process; nine were denied because they did not meet the mediation criteria.

In August 1999, the Office of Management & Budget approved an Appeals ADR survey for internal and external customers. The surveys are available on our ADR Intranet Web site.

Section 3465 of RRA 98 also directed Appeals to pilot a videoconferencing program for taxpayers in remote areas. In November 1999, Appeals will hold Appeals conferences in conjunction with the existing videoconferencing program of the U.S. Court of Appeals for the Tenth Circuit in Denver and the U.S. Bankruptcy Court in Cheyenne and Casper, Wyoming.

What are your agency's ADR goals, including resources necessary for the future?

The Service supports the development and use of ADR techniques by Appeals to create an administrative forum, independent of compliance functions, to efficiently prevent or resolve disputes. Appeals is encouraged to survey its customers and expand ADR test programs to enhance taxpayer service.

Bureau Name: United States Mint

Bureau Dispute Resolution Specialist and other ADR points of contact:

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Irwin Ansher

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E-mail: iansher@usmint.treas.gov

Does your agency have an ADR policy statement? Our agency has an ADR policy statement.

What is your agency's ADR budget?

Funding is provided as needed for training of collateral duty agency mediators and other agency personnel.

How many FTE's does your agency dedicate to ADR?

If none, how are your ADR activities staffed?

Staffing for the program includes collateral duty personnel. Mediators and other ADR personnel service the Mint in which they are employed. As a result, there is no significant costs incurred.

What ADR programs has your agency expanded or improved during FY 1999?

Programs established during FY 1999 to promote greater use of ADR include training programs emphasizing the advantages of our ADR program, and memorandums issued by the Director of the Mint to all employees encouraging the use of our ADR program.

The Mint's ADR program was expanded and is now operating in four of our facilities.

What benefits has your agency received from these programs?

The number of administrative discrimination complaints filed against the agency has steadily declined. Further over eighty percent of the disputes have been resolved during mediation, an early stage in our ADR process. Together, these factors have resulted in a substantial savings in costs which would otherwise have been incurred, absent the availability of the ADR program.

What ADR success stories does your agency have to share with the President?

The Mint was recently awarded a National Partnership Award in part based on the success of our ADR program.

What are your agency's ADR goals, including resources necessary for the future?

Future plans include the expansion of our ADR program at our San Francisco and West Point facilities.

Bureau Name: Bureau of the Public Debt

ADR Specialist:

Cheryl Adams

Phone: (304) 480-7853

Fax: (304) 480-6074

E-mail: cadams@bpd.treas.gov

What is your agency's ADR budget?

FY 99: \$ 6,000

FY 00: \$ 16,000

How many FTE's does your agency dedicate to ADR? None

What ADR programs has your agency expanded or improved during FY 1999?

Our Jan. 1, 1999 pilot program became permanent

What ADR programs has your agency expanded or improved during FY 1999?

None

What benefits has your agency received from these programs?

Earlier resolution of EEO complaints.

What ADR success stories does your agency have to share with the President?

100% success rate with ADR in FY 99 and 50% success rate since pilot was introduced.

What are your agency's ADR goals, including resources necessary for the future?

We have embraced the changes to the EEO regulations and accordingly increased our budget amount for ADR programs by \$ 10,000. We anticipate increased use of our ADR program by bureau employees.

Bureau Name: United States Secret Service

Agency Dispute Resolution Specialist and other ADR points of contact:

Paul Imbordino (Special Assistant to the Director/Ombudsman Program Coordinator)
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Fax: (202) 406-5246
EMail: pimbordino@usss.treas.gov

Does your agency have an ADR policy statement? Yes x No

Purpose

The United States Secret Service ("Secret Service") already has in place a successful ADR program known as the Secret Service Ombudsman program. The purpose of this policy is to attempt to further encourage the use of the Ombudsman program as an alternative to the EEO process in the hopes of effecting an early and mutually agreed to resolution of EEO concerns. This policy establishes a pilot EEO Early Complaint Resolution Program ("ECRP").

Duration

This pilot program will remain in effect for twelve months, after which the program will be evaluated to determine whether it should continue, be modified, or be discontinued. The EEO Officer will have the authority to extend the pilot program for an additional period of time if the data collected is not sufficient to determine whether the program has met its stated objectives.

Availability of Program

This program is available to Secret Service employees, applicants for employment with the Secret Service, and in some cases, former employees of the Secret Service.

Objectives

- a. Expedite resolution of discrimination complaints.
- b. Define areas of agreement and clear up misunderstandings.
- c. Reduce costs associated with processing EEO complaints.
- d. Prevent unnecessary litigation.

What is your agency's ADR budget?

The Special Assistant to the Director (SATD) - (Ombudsman Program Coordinator) is a Special Agent whose full-time position is funded as part of Secret Service's Director's staff. There are nine other part-time Ombudsman and EEO office staff who perform ASDR-related duties secondary to other Secret Service employment.

How many FTE's does your agency dedicate to ADR?

The Special Assistant to the Director (SATD) - (Ombudsman Program Coordinator) is a Special Agent whose full-time position is funded as part of Secret Service's Director's staff. There are nine other part-time Ombudsman and EEO office staff who perform ADR-related duties secondary to other Secret Service employment.

What programs has your agency established during FY 1999 pursuant to the Administrative Dispute Resolution Act and the President's directive to promote greater use of ADR?

The Secret Service has extended its Early Complaints Resolution Plan (an ADR-related plan utilized in connection with EEO complaints).

What ADR programs has your agency expanded or improved during FY 1999?

The Early Complaints Resolution Plan (formerly a pilot program).

What benefits has your agency received from these programs?

Several disputes have been resolved in a timely manner and resolution was possible at a lower level. This has increased employee morale, productivity and kept costs down, *e.g.*, litigation expenses.

What ADR success stories does your agency have to share with the President?

None yet.

What are your agency's ADR goals, including resources necessary for the future?

One of Secret Service's goals is to raise the EEO resolution rate through the use of ADR. In addition, the Secret Service is considering the possibility of using shared neutrals.

Bureau Name: Office of Thrift Supervision

Bureau Dispute Resolution Specialist and other ADR points of contact:

Name: Scott E. Schwartz
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Fax: 202 906-6260
E-mail:scott.schwartz@ots.treas.gov

Does your bureau have an ADR policy statement? Yes X No

Each OTS ADR program has an applicable policy statement.

What is your bureau ADR budget? \$ see below

If you do not have a budget, how are your ADR activities funded?

For EEO or employee grievance matters, OTS uses mediators from the Sharing Neutrals Program. Training for EEO Specialists is provided in-house, without additional cost.

For labor relations matters brought under our collective bargaining agreement, arbitrators are obtained through the Federal Mediation and Conciliation Service, and are paid under a "loser pays" provision in our CBA, *i.e.* the arbitrator is paid by the party (agency or union) against whom a decision is rendered. No arbitrations took place in FY 1999.

In 1995, OTS established a workplace disputes ADR pilot project in our Midwest Region (MWR). Two MWR employees are trained mediators and provide mediation services to other Federal agencies as part of the sharing neutrals program. Expenses for training are covered under the OTS training budget. The OTS mediators' travel costs are covered by the agency receiving the service. OTS MWR workplace disputes program costs are paid from the MWR Regional Director's or Community Affairs Liaison miscellaneous expense accounts.

OTS also operates an Examination Review Program to informally resolve disputes between thrift management and the bureau arising from thrift examination findings. Costs for operating this program are *de minimus*, and are incorporated in overall unit budget allocations. No such disputes were raised in FY 1999.

OTS developed an Ombudsman Program to assist the thrift community in resolving problems or concerns relating to regulatory oversight that may hinder their institution. The OTS Ombudsman Program budget for 1999 is: approximately \$500,000

How many FTE's does your bureau dedicate to ADR? Two, as described below

The OTS Ombudsman is staffed with one full time Ombudsman and one full time attorney, detailed from the OTS Office of Chief Counsel. In addition, five regional staff are assigned to the Ombudsman

Program's Examination Outreach Program (EOP). The EOP regional staff report their progress to the OTS Ombudsman.

If none, how are your ADR activities staffed?

See above. All other OTS ADR activities are incorporated into overall unit staffing. Employees perform ADR functions as collateral to their other responsibilities.

What programs has your bureau established during FY 1999 pursuant to the Administrative Dispute Resolution Act and the President's directive to promote greater use of ADR?

OTS created and implemented an ADR in EEO pilot program in October 1998 and distributed ADR information and explanatory material to all affected employees. OTS also conducted training in effective communication.

What ADR programs has your bureau expanded or improved during FY 1999?

The OTS Ombudsman Program has expanded during 1999 by initiating Directors' Forums in each of the OTS regions. The first was held in Dallas, Texas on October 21, 1999.

What benefits has your bureau received from these program?

The OTS Ombudsman Program has contributed to a reduction in supervisory appeals.

There have been no matters handled through the Examination Review Program. While no matters raised under our CBA have gone to arbitration, several have been resolved at earlier steps in the negotiated grievance procedure.

Two EEO matters went through mediation without resolution.

Several matters went to mediation in MWR program without resolution. However, it did get the parties to "open up" and discuss the issues more constructively. The mediators OTS has provided through the sharing neutrals program have provided mediation services for the EEOC and the US Postal Service resulting in three settlements.

What ADR success stories does your bureau have to share with the President?

In two of the mediations conducted by the MWR mediators, one party or the other announced prior to mediation, "There is no way you can resolve this matter through mediation." Each matter was settled in less than three hours.

What are your bureau's goals, including resources necessary for the future?

OTS's goals for use of ADR are to resolve disputes quickly and as early in the dispute process as possible, without requiring substantial additional resources. OTS also intends to utilize industry focus groups to develop future regulations, as an alternative method of negotiated rulemaking.

REPORT TO THE PRESIDENT ON AGENCY ADR ACTIVITIES

Agency name: Tennessee Valley Authority

Agency Dispute Resolution Specialist and other ADR points of contact:

Name: James E. Fox

Name: William L. Osteen

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Telephone: 865-632-4142

Email: jefox@tva.gov

Email: wlosteen@tva.gov

Does your agency have an ADR policy statement? Yes X No

What is your agency's ADR budget? \$

If you do not have a budget, how are your ADR activities funded?

There is no separate budget or staff for ADR activities. ADR activities instead are funded as components of various agency program budgets—primarily that of the Office of the General Counsel, whose attorneys handle most ADR proceedings as a part of their legal work for TVA.

How many FTE's does your agency dedicate to ADR?

If none, how are your ADR activities staffed?

See answer to preceding question.

What programs has your agency established during FY 1999 pursuant to the Administrative Dispute Resolution Act and the President's directive to promote greater use of ADR?

In July 1999, TVA implemented an ADR pilot program which includes mediation and arbitration for various claims filed against TVA. TVA has independent litigating authority and is not subject to the administrative claims procedures under the Federal Tort Claims Act. Like other agencies, however, TVA has administrative procedures in place for processing claims involving employment discrimination and other labor and personnel issues pursuant to the various Federal statutes and regulations that govern such claims and the labor agreements TVA has with its various employee unions. In addition, most contract claims against TVA are resolved in accordance with the procedures contained in TVA's contracts implementing the Contract Disputes Act of 1978.

During each year, however, TVA receives a large number of claims from members of the public and others for which we have no formal administrative resolution processes. These include, for example, claims arising out of vehicular accidents, injuries on TVA's lakes and land, electric power service issues such as power supply interruptions, damage to property resulting from TVA's construction and other activities, title and land disputes, some contract claims, and environmental issues. Although we have been successful in resolving most of these kinds of claims without litigation, each year a number of claims result in lawsuits. We concluded therefore that, to the extent we would be able to resolve more claims through mediation or other alternative dispute resolution procedures, TVA would save the costs

normally associated with litigation, including the considerable time spent by TVA employees in discovery proceedings and testifying at depositions and trials throughout the country. Litigation costs, which vary with each case, can range from a few thousand dollars for simple cases to hundreds of thousands of dollars for more complex cases. We also thought that these alternative procedures would probably be viewed favorably by the public, since there would be similar costs savings for claimants, and they would have an opportunity to pursue a resolution of their claims in a more prompt and less adversarial setting than that usually encountered in litigation.

Our plan, therefore, was to institute a pilot program in which TVA would offer claimants the opportunity to participate in mediation or binding arbitration of their claims on a voluntary basis after initial attempts at resolving their claims have been unsuccessful. Under the program, TVA offers to mediate any claim, regardless of amount. The mediator who is designated initially by TVA is a practicing attorney with whom TVA has entered into a contract to provide mediation services specifically for this program. A description of the mediator's background and qualifications is provided to the claimant; however, if the claimant prefers that someone else serve as mediator, we will consider using one of the mediators who has been approved by the Federal courts for mediation and arbitration. The mediator's role, of course, is to assist the parties in evaluating the claims and reaching a voluntary settlement. If a settlement is not reached, the parties may proceed to litigation. Even if a claim were not completely resolved through mediation, the issues presented by the claim might be narrowed or the parties might have a better understanding of each side's position, thereby enhancing the possibility of settlement subsequently. The mediator follows the rules and procedures that have been issued by the various Federal courts for mediation of pending cases.

For claims of a certain amount, TVA offers claimants the opportunity to have their claims submitted to an arbitrator. The arbitrator's decision is final and binding on all parties, who agree to relinquish their right to pursue litigation in court. At this point, TVA is offering arbitration for claims of \$30,000 or less. This figure, of course, could be set at a higher level. Depending on the success of the program, TVA might consider raising this figure to \$50,000 or \$75,000, or possibly even higher in the future. The decision to offer arbitration is on a case-by-case basis. Arbitration is not offered in those cases which we do not believe are appropriate for resolution by an arbitrator. This, for example, would include cases involving significant legal principles that could adversely affect TVA and thus should be decided by the courts. Arbitration proceedings are conducted generally in accordance with established arbitration rules and procedures but are before a single arbitrator and do not require the various filing and other fees often provided for in those rules. Arbitrators are selected from the same court-approved list mentioned previously.

The cost of both the mediation and arbitration proceedings is paid by TVA for smaller claims and hopefully will be offset by the savings realized by TVA in avoiding lawsuits or narrowing any litigation. The costs within TVA are charged to the particular organization whose employees or activities were the basis for the particular claim. For larger, more complex claims, which would generally require more time, the costs are divided between TVA and the claimants.

What ADR programs has your agency expanded or improved during FY 1999?

See answer to preceding question.

What benefits has your agency received from these programs?

The pilot program, in our opinion, has been beneficial. Since the program was implemented in July 1999, TVA has offered to mediate or arbitrate 12 separate claims that were filed against it. Five of the offers were refused, and six are still being considered. One claim in which mediation was offered was settled. We believe that the offer and ensuing discussions about that claim and the possible use of ADR contributed to the settlement. We also believe that in all of those claims where offers to mediate or arbitrate were made, the issues were narrowed or at least defined more clearly as a result of the discussions between TVA and the claimants.

What ADR success stories does your agency have to share with the President?

See answer to preceding question.

What are your agency's ADR goals, including resources necessary for the future?

TVA plans to make the pilot program a permanent component of its claim procedures. It is anticipated that additional offers of mediation and/or arbitration will be made and more formal procedures will be implemented in this area. Consideration also will be given to devoting additional funds and personnel resources to handling ADR activities in the future as those activities increase. TVA's ultimate goal, pursuant to its ADR policy statement, is to utilize ADR procedures wherever feasible to achieve consensus decisions which resolve disputes fairly and economically.

REPORT TO THE PRESIDENT ON AGENCY ADR ACTIVITIES

Agency name: Department of Veterans Affairs

Agency Dispute Resolution Specialist and other ADR points of contact:

Guy H. McMichael III
Chair, VA Board of Contract Appeals
VA Dispute Resolution Specialist
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guy.mcmichael@mail.va.gov

Patricia J. Sheridan
Hearing Examiner, VA Board of Contract Appeals
VA Deputy Dispute Resolution Specialist
202-273-6743
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Does your agency have an ADR policy statement?

The VA is currently in the final stages of issuing an Departmental ADR policy and directive which is expected to be finalized by the end of 1999 and will be forwarded to the Attorney General upon completion.

What is your agency's ADR budget?

The VA does not have a dedicated ADR budget but funds its ADR activities out of the existing budgets of the individual administrations, staff offices' organizational elements, and facilities.

How many FTE's does your agency dedicated to ADR?

VA dedicates approximately 4 FTE's to ADR activities. However most VA facilities have or will have in the next year one or more individuals performing ADR activities (200 +) on a collateral duty basis.

What programs has your agency established during FY 1999?

a. VA's most important achievement during FY 1999 was the development of VA Directive 5978, Alternative Dispute Resolution (DRAFT). The Directive sets forth the Department's commitment to using ADR, particularly mediation, to resolve workplace conflicts as early as feasible, to the maximum extent practicable, in an appropriate and cost-effective manner, and at the lowest organizational level. VA Directive 5978 (DRAFT) and the policy contained in it is a "bottom up" rather than "top down" product of an intra-agency working group that included representation from all three administrations, key staff offices and Labor. The activities of the working group brought increased interest and buy-in for ADR throughout the Department.

In addition to containing Departmental ADR policy, the Directive sets forth an infrastructure for Departmental ADR activities, and directs Administration Heads, Assistant Secretaries and Other Key

Officials to establish and implement ADR policies and programs that facilitate the appropriate use of mediation to resolve workplace disputes. Administration Heads, Assistant Secretaries and Other Key Officials are also directed to insure that the option of mediation be available to all VA employees and that each employee is provided a basic understanding of mediation and the ADR program available at their facility so they can make informed decisions about the mediation option. This is a worthy goal considering VA has 200,000+ employees located throughout the country and in Headquarters; 173 medical centers, 600 ambulatory care/community based outpatient clinics, 153 nursing homes and domiciliaries, 55 regional offices, 117 cemeteries and other facilities. Finally, Administration Heads, Assistant Secretaries and Other Key Officials are directed to collaborate with each other and Labor partners to design, implement, and use ADR programs at all levels of the Department under a VA ADR Steering Committee and other ADR networks in and outside the Department. As previously mentioned, this Directive is expected to be finalized by the end of 1999.

b. Additionally, VA's Office of Resolution Management (ORM), the VA office responsible for equal employment opportunity (EEO) complaint processing services to VA employees, former employees and applicants for employment, is in the final stages of establishing a mediation program that was developed collaboratively with various VA organizations, administrations, facilities, and Labor. ORM's Mediation Program is expected to be a critical element and play a major role in the Department's EEO dispute resolution system. Relying strongly on local VA facility involvement in the mediation process, ORM intends to look to local facility mediation programs as a primary source of mediators. Depending on the desires of the parties and availability, other sources for mediators will be considered, including other VA mediation programs, federal agency and inter-agency mediator sharing programs, and ORM's own internal cadre of mediators. Early in 1999, ORM piloted two mediation programs in their Bay Pines and Hines field offices. In these pilots, participants from the local medical centers, regional office, regional counsel, labor unions, and other VA organizations, worked together with representatives from ORM field offices and headquarters to fashion mediation programs for their geographic servicing area. These programs are tailored to meet the needs of the facilities serviced, to enhance communication between the various participants, and to maximize the available ADR resources. Through this program ORM expects to be in compliance with EEOC regulations requiring all agencies to "[e]stablish or make available an alternative dispute resolution program," for both the pre-complaint and formal complaint processes. 64 Fed. Reg. 37643-37661 (contained at 29 CFR 1614, and requiring all agencies to "[e]stablish or make available an alternative dispute resolution program," for both the pre-complaint and formal complaint processes. 64 Fed. Reg. 37643-37661 (July 12, 1999)). ORM is continuing its efforts to promote mediation throughout the Department with full program implementation expected by July 2000. A current draft of the ORM Mediation Program is attached with implementation of the written policy and program expected by the end of 1999.

What ADR programs has your agency expanded or improved during FY 1999?

ADR programs expanded or improved during FY 1999: VA continually seeks to expand and improve its ADR programs. One such example is the VA Early Mediation Program. This program was established in 1994 to provide mediator services to VA facilities in the Washington area. As a result of 1999 publicity efforts, high level and Labor commitment, the program has been revisited and revamped. A VA-EMP Council was established to support the program, and a subgroup of the Council is being funded to develop a workplace mediation awareness video. A "VA-EMP Awareness Day" event was

recently sponsored and hosted in Headquarters by the Assistant Secretary for Human Resources and Administration and the VA Dispute Resolution Specialist. Over 200 employees attended. They watched mediation related videotapes, were provided materials on mediation and the VA-EMP, were introduced to VA-EMP Liaisons in their organizations and met various high level officials who came to support the event, including the Deputy Secretary.

What benefits has your agency received from these programs?

Benefits VA has received from ADR programs: While VA has not previously attempted to gather extensive data on the benefits received from its various mediation programs, anecdotal case-by-case information is positive, indicating that:

- Relationships were repaired
- Disputants understood how the other party perceived the situation which helped resolve the dispute.
- Through mediation, parties received a model for resolving similar problems that might arise in the future.
- A mechanism was provided to assist in resolving disputes that previously did not have an existing dispute resolution system.
- Disputes were resolved more quickly
- Litigation expenses were lessened
- Relationships did not deteriorate further because of early dispute resolution
- Staff resources were not diverted from their prime mission
- Gossip was avoided
- A safe and appropriate forum was provided to promote honest expression of concerns
- Issues in dispute were resolved or narrowed, allowing parties to focus on real issues in dispute

What ADR success stories does your agency have to share with the President?

In 1995, the VA Regional Counsel's office in Florida, in conjunction with the Network 8 medical centers (Florida and Puerto Rico hospitals) worked together to form a mediation program that uses VA employee mediators to provide mediation services in workplace disputes. This initiative, called the VA Florida-Puerto Rico Mediation Program, had several goals. It hoped to provide low-cost mediation services to each of the participating hospitals. It was planned to help reduce the cost of personnel litigation in the Network, and to intervene in workplace conflicts and disputes as early as feasible, to facilitate earlier and quicker resolution of disputes. It also sought to enhance existing traditional conflict resolution mechanisms and to provide employees an avenue to resolve workplace conflicts where no resource previously existed. Finally, the program hoped to give VA employees in the area better communication skills and conflict resolution techniques to enable them to more effectively resolve their own workplace conflicts.

Although the VA Florida Puerto Rico Mediation Program flourished initially, it lacked complete union buy-in, mainly because union involvement was not sought during the initial planning stages for the program. Union officials were reluctant to encourage bargaining unit members to use the services of mediators and a mediation program for which they had no input. Fortunately, this problem was able to

be addressed throughout the hospitals' partnership councils, by providing information to the various unions representing VA employees in Florida and training tailored to meet unions' needs and their advocacy role in mediation.

In FY 1998-99, several things occurred that catalyzed and revitalized the program. First, VA's EEO processing system was totally revamped with complaint processing taken out of local VA facilities and placed into a newly created VA organization called the Office of Resolution Management (ORM). ORM puts major emphasis on using mediation to resolve workplace disputes. Within the same timeframe, the changes to 29 CFR 1614 that were circulating for agency review indicated an increased use of mediation. These factors and others culminated as ORM began to define its new program and processes and began to phase in its regional field offices. Increasing Administration and Departmental interest in ADR applications to workplace disputes encouraged the persons working on developing the new ORM program to provide an increased role for mediation in complaint processing. ORM employees began to receive intensive training that included mediation awareness and in many instances, mediator skills training.

In FY 1999, the Florida ORM Field Office began partnering with the Florida Puerto Rico Mediation Program. This relationship faced initial challenges because of conflicting interests of various VA organizations, as well as a past culture of "stove-piping" and lack of sharing between administrations and other organizational elements within the Department. Also, to varying degrees, local facilities saw ORM as taking away what had previously been their responsibility, EEO complaint processing, and relationships between ORM and local facilities were often strained. However, through the partnering effort between the Florida Regional Counsel's Office, ORM and the local facilities, a stronger relationship and an enhanced, effective mediation program has evolved.

The group partnered to expand the program and made it accessible to all VA organizations in the Florida area. This has resulted in more comprehensive and cohesive delivery of mediator services to VA employees in Florida. The program permits early local resolution of workplace disputes in lieu of more formal and expensive departmental processing of EEO complaints. The program is open and available to all VA employees in Florida, and various VA organizations and facilities share resources through the program, medical centers, hospitals, out-patient clinics, regional benefits offices, and national cemeteries. This initiative serves as a model for other VA localities and teams from the program are frequently asked to assist other geographical locations in the VA community to advise them on how to design and develop their own programs. To date, over 100 workplace disputes have been resolved through the Florida Puerto Rico Mediation Program with a cost savings for the VA of over \$470,000.

What are your agency's ADR goals, including resources necessary for the future?

To accomplish the goals set forth in VA Directive 5978 (DRAFT); primarily that of making the mediation option available to every VA employee for every workplace dispute and providing each VA employee a basic understanding of mediation and the mediation program at their facility. VA plans to accomplish these goals within current budgetary constraints.